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AN OUTLINE OF ENGLISH LOCAL GOVERNMENT

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A SHORT HISTORY OF ENGLISH LAW, FROM THE EARLIEST TIMES TO THE END OF THE YEAR 1927

AN OUTLINE OF ENGLISH LOCAL GOVERNMENT

BY

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SEVENTH EDITION, REVISED AND LARGELY REWRITTEN

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First Published	*October*	*1894*
Second Edition, revised by R. C. K. Ensor	*May*	*1907*
Third Edition, slightly corrected	*November*	*1913*
Fourth Edition	*August*	*1919*
Fifth Edition, revised	*April*	*1921*
Sixth Edition, revised	*May*	*1925*
Seventh Edition, revised and largely rewritten		*1930*

13523

PRINTED IN GREAT BRITAIN

PREFACE TO THE SEVENTH EDITION

THE great legislative alterations in the scheme of English local government introduced since the publication of the sixth edition of this little book have, naturally, necessitated correspondingly great changes in the new edition. And the difficulties always inherent in such changes are enhanced, in the present case, by the fact that some of the more important alterations, though actually on the Statute Book, have not yet taken effect, and are, consequently, difficult to describe with confidence. The author feels, therefore, that he is entitled to bespeak the indulgence of his readers if his task has not been performed with complete accuracy.

It is also, perhaps, permissible to remind possible critics that the book makes no claim to be a professional text-book, and that, therefore, many matters which would naturally find place in such a work, will be sought in vain in a book which professes only to sketch the outline of a vast and complicated system, whose details, as is well known, require for complete treatment not one but many large volumes.

Nevertheless, the author may venture to congratulate himself and his readers on the fact that he has been fortunate enough to secure the valuable assistance, in his task of preparing the new edition, of Mr. Cyril J. Newman, whose experience as Deputy Town Clerk of the ancient and important City of Exeter has been freely and generously placed at his and their disposal. While it would be unfair to hold Mr. Newman responsible for the accuracy of the book, the author desires to make special acknowledgment of his help, to which its pages owe much of whatever merit they may display.

E. J.

February, 1930.

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AN OUTLINE OF ENGLISH LOCAL GOVERNMENT

CHAPTER I

INTRODUCTORY

Central and Local Government.

IN every civilised State of any importance, the functions performed by the various governing bodies and individuals are capable of one great and useful classification. They are either **central,** that is, exercised by persons whose jurisdiction extends over the whole area ruled by the State, or **local,** that is, exercised by persons whose authority is limited to some special portion of the State's territory. It is not a question of the situation, nor of the method of appointment, but of the *authority* of the body or official in question. The magistrates for the county of Leicester might (conceivably) live and hold their meetings in London ; but, so long as their authority was limited to the county of Leicester, they would be a local, not a central, authority.

Importance of distinction.

This distinction is always found in civilised States ; but the relationship between the two classes of governing bodies varies greatly in different countries, and the nature of the difference is of vast importance. Too much attention has in the past been paid to the forms of government, and too little to its scope. Whether a State calls itself a Monarchy or a Republic may be of small consequence in practical affairs ; few people would deny that there is more real liberty in monarchical England than in republican France. But the relation-

ship between the central and the local institutions of a country must always be of great practical moment; for upon it will depend the real extent and value of the share open to the average citizen in the work of government.

Centralised States.

Localised States.

To illustrate. Civilised States fall roughly into two great classes, in respect of the relationship between their organs of central and local government respectively. Either the local organs are a creation of and subordinate to the central government, or the central government is a creature of and historically subordinate to the local organs. Of course very few States fall completely on either side of this line of demarcation; but it is generally easy to tell of a particular State to which side it inclines. The type of the former class is the "new" country, such as the western States of the American Union and the Australian States, or the country which has violently broken with its past, such as France. The type of the latter is the "old" country, such as England, Norway, and the Puritan colonies of America.

Influence of distinction on political character.

Between the two classes of State the differences of political character are immense; and they are partly the result, partly the cause, of the difference of organisation. It is the purpose of this book to deal with machinery, not with results; but it may be said, briefly, that, in countries where the organs of local government are under the thumb of the central authority, although the efficiency of administration may be great, the political character of the people will be unsatisfactory; it will be apathetic for long periods, and then dangerously excited, with the result of instability and corruption in the central government. On the other hand, a country of strong local government may be slow to move, and blundering in its methods; but it will be a country of steady progress, and of political stability and honesty.

England the type of a localised State.

England is pre-eminently a country of local government. True it is that the central legislature has in recent times created, perhaps somewhat arbitrarily, new

units and organs of local government. But the great outlines of local government in England were drawn ages before central government (as we understand it) came into existence. Central *administration*, as distinct from mere political overlordship, dates from the twelfth century, and is the work of French officials. Local administration is at least five hundred years older, and was probably the unconscious adaptation of primeval Teutonic custom to the conditions of new settlement. Treasury, King's Bench, and Parliament come down to us from Angevin and Plantagenet kings. But Township and Hundred and Shire carry us back to the days before Alfred, to the dim beginnings of our story; and it was, in fact, only by an integration or union of these smaller groups that England became a nation at all. Consequently, central government, when it came, had to reckon with local government as an established fact, and has had to do so ever since. Even in its most drastic moods, even when creating sanitary districts and electoral divisions, Parliament has, in the great majority of cases, followed the old lines. Either it has given the old area a new name, or it has given a new area the old name. Nothing more clearly shows the profound conservatism of English character than this practice. Nothing, it may be added, has done more to render the study of English local government perplexing.

This is perhaps the greatest penalty (and surely not an overwhelming one) which we pay for living in a country with an unbroken political development. It is impossible to understand any part of the present machinery unless we know, however vaguely, something of its past. For the student this fact has, of course, its own peculiar charm. Draw but one thread in the web of English politics, and you can follow it back and back through the centuries, to the days when the loom stood bare to the workman's hand, till you seem almost to hear the grating of those keels on Ebbsfleet beach from which our fathers sprang ashore to found the

mightiest empire which the world has ever seen. But for practical enquirers the situation has its drawbacks. Life is short and crowded, and there are many books to read. Here, then, we propose to give only just so much of the past as is absolutely essential for an intelligent appreciation of the present.

Plan of the book.

In truth we need some help. The rules of English local government lie chaotic before us, contained in Acts of Parliament, decisions of the courts, Orders in Council, and vague traditions—a weltering mass of confusion. Every good citizen is bound to know something of those rules; they touch and concern his everyday life. He, and those dependent upon him, may be defrauded, oppressed, poisoned, infected, and otherwise injured because he is ignorant of them. Yet how is he to learn about them? It is the business of this book to give him at least so much knowledge that he may know where to go for more. And in the first place it will be well for him to grasp clearly a few general ideas which will be of service to him all through his study. Then he can turn to examine the subject piece by piece. The rest of this chapter will be devoted to the statement of five points which will, it is hoped, serve as a kind of life-saving apparatus after the great plunge.

Township, Hundred, Shire.

Point I.—Township, Hundred, and **Shire,** these names still give us the key to English local government. The township is now known by its ecclesiastical name of **parish,** and the shire by its Norman name of **county;** but the old identity is substantially preserved, and the institutions themselves are as much alive to-day as they were a thousand years ago. With the hundred the case is different. Its name survives,[1] but, as an institution,

[1] In the counties of York and Lincoln, the hundreds are generally replaced by the Danish *Wapentakes*; in Northumberland, Durham, Cumberland, and Westmoreland by *Wards*. In Kent the hundreds are grouped into *Lathes*, and in Sussex into *Rapes*; but these divisions have long ceased to have any political meaning. On the other hand, the *Ridings* of Yorkshire and the *Parts* of Lincolnshire are, as we shall see, almost equal to counties.

the thing is almost dead. Nevertheless its place has been taken by a number of organs which, though they differ widely from it in scope and function, still, from the fact that they generally occupy an intermediate position between the parish and the county, it seems convenient to group as analogues of the hundred.

The borough.

But there is one very important organ of local government which refuses to be classed under any one of our three heads. This is the **Borough,** an unit which formed no part of the original Teutonic scheme of settlement, but which very early began to insist on being treated as a distinct organ. The borough, in the course of its development, borrowed its organisation indiscriminately from township, hundred, and shire, as well as from other sources; but it never exactly resembled any one, and at last made good its claim to separate recognition by taking rank alongside the shire as a constituency, returning members of its own to serve in the national Parliament. Since that date its history has been entirely special, and it must be treated separately. For some reasons it would be convenient to take it first; for it has outrun its rivals in the race, it now presents the highest form of local government, and other institutions are rapidly tending to imitate its organisation. But the difficulties would be too great. The borough is really a development of simpler forms; and the simpler forms must be understood first. The borough, therefore, shall stand as our last item.

Here, then, is our scheme of the subject—

Group A.—The *parish.*

1. The Urban Parish.
2. The Rural Parish.

Group B.—The *hundred* and its analogues.

3. The Hundred.
4. The Petty Sessional Division.
5. The County Court District.

6. The Poor Law Union.
7. The Sanitary District.
8. The Highway District.

Group C.—The *county* and its analogues.

9. The Parliamentary County.
10. The Military and Judicial County.
11. The Administrative County.
12. The Standing Joint-Committee.

Group D.—The *borough.*

13. The Parliamentary Borough.
14. The Municipal Borough.

This is not quite chaos.

Classification of *functions* of government.

Point II.—We classify the functions of government into the four groups of *legislative, administrative, executive,* and *judicial.* Though not logically defensible, this classification is practically useful. By ' legislation ' we understand the business of laying down express general rules for the guidance of conduct. By ' administration ' we mean the discretionary use of powers conferred by legislation, more especially the important power of raising and expending money. By ' execution ' we understand the enforcement, through officials who are not allowed much discretion, of the provisions of imperative law; and by ' judicature ' we mean the business of deciding whether the general provisions of the law apply to particular cases.

Now, these functions are generally, though not always, in different hands; and the persons to whom the work of local government is entrusted can be classified accordingly. And, as a rule, we shall find that persons who do legislative or administrative work are **elected** to their positions by a suffrage more or less popular, and receive no remuneration for their labours; while the executive and judicial officials are usually **appointed** by some small body or by an individual without any popular vote, while they receive pecuniary return for their services. This rule is not, of course, universally

Legislation and Administration.

Executive and Judicature.

true; but it tends to become more and more true as time goes on. The Justice of the Peace is an apparent exception from the rule; but in truth he is one of its most striking illustrations. When the Justice of the Peace was created, he was first an executive and then a judicial person. He was fairly well paid; and, by strict law, he can still claim to receive wages. As most people know, he has long ceased to do so. But, if we look back on his history, we shall perhaps notice that the time at which he ceased to draw his wages corresponds pretty closely with the time at which administrative functions were first committed to him; while the fact that a person with so many administrative powers as the Justice of the Peace until recently exercised should never be subjected to the "baptism of popular election," had long been denounced as an anomaly in our system. It need hardly be pointed out that the separation between election and remuneration makes English politics vastly different from others which, at first sight, they appear to resemble—from American politics, for example.

The *legal* character of English local government.

Point III.—English local government is **legal,** not **prerogative.** No local body, no local official, can act without definite legal authority. If it be alleged that such a body or person has committed what in private hands would be a wrongful act, the accused must prove specific legal authority. No general plea of discretion or justification will suffice. And, moreover, the accused will be judged in precisely the same courts and in precisely the same way as a private individual. If the charge be proved, doubtless reprimand or dismissal will come from the official superior. But the ordinary legal punishment comes too. This rule, which extends even to the organs of the central government, and to which there are but very few exceptions, is justly regarded as one of the keynotes of the English political system. The acts of the sovereign body, the King in Parliament, can, of course, never be legally questioned; the acts

of every other official person or body can be questioned in the same way as those of a private citizen. A Secretary of State, with the highest motives, but without legal authority, breaks into X's house to search for papers. He can be sued in trespass precisely as if he were a coal-heaver. Contrast this with the state of things in some continental countries, where any dispute between an official and a private person is remitted to an administrative bureau, or a tribunal largely composed of administrators. A certain amount of doubt as to whether the English rule in this matter is the wiser has recently shown itself. But the fact remains that, with small exceptions, it has been maintained.

Independent character of English local government.

Point IV.—English local government is **independent, not hierarchical.** Generally speaking, each organ is free to act as it pleases within its authority, provided that it acts *bonâ fide*. Each organ is under the special care of some department of the central government, whose duty it is to see that local powers are not abused. Thus, if a Justice of the Peace should palpably misconduct himself, the Lord Chancellor will remove or otherwise censure him. If a local education authority neglects its duty, it will be taken to task by the Ministry of Education. But the control thus exercised is *critical* or *censorial* only, not absolute. So long as the local authority does its best, and keeps within the law, however mistaken that best may be, the central government has no right to interfere, even at the request of a person suffering from the consequences of the mistake. To this rule there are some exceptions, the most important being the power of the High Court of Justice to entertain appeals on questions of law from the County Court judges in all but very trifling cases. But the rule is generally followed, and it is of great political importance. Without it local government would be a mere shadow, a convenient instrument for the use of the central authorities, not an independent expression of popular views.

Point V.—Lastly, there is one warning which should always be present to the mind of the student of English Local Government. As has been before hinted, English legislators are very apt to *call different institutions by the same name.* From the point of view of the layman this is a horrible practice; for it leads with almost deadly certainty to the confusion of the institutions thus similarly named. Thus, the institution known as the 'county' exists in at least three different capacities —as a military and judicial unit, as a parliamentary unit, and as an administrative unit. And yet the actual area covered by the expression 'the county of X——' may be different for all these three purposes. It is obvious, therefore, that a student may fall into great mistakes if he assumes the identity of all the three areas covered by the expression "the county of X——." He may assume, for example, that a man caught poaching in a certain village will necessarily be brought before the Justices of the same county as that to whose County Council the village pays its rates. Whereas the village may be, for judicial purposes, in the county of X——, and, for administrative purposes, in the county of Z——. The student, therefore, must be constantly on the alert to ascertain in what character a given institution is spoken of.

Bearing these points in mind, we proceed to consider the existing scheme of English local government.

GROUP A

THE PARISH

1. THE URBAN PARISH . . . } CHAPTER II.
2. THE RURAL PARISH . . . }

CHAPTER II

THE PARISH

IT has been incidentally remarked that the Parish is the ecclesiastical name of the Township. This statement, though not strictly accurate, is true enough for general purposes. The original unit of settlement among the English in England was the *tun* or *town*, which originally meant simply an enclosure surrounded by a wall or hedge; and the township (*tun-scipe*) was merely the area claimed by the town—its jurisdiction as we should say—just as the lordship is the jurisdiction of the lord, the stewardship of the steward, and so on. The township is the very kernel of English local government; and, though most of its ancient history has perished, enough survives to show that it was once a real political organism, with a distinct life of its own. It consisted of a group of householders carrying on agriculture and industry on a co-operative plan, combining together also for purposes of defence and administration of justice. The discussions necessary to shape the policy of the township were carried on in the town moot, or meeting, which was at first probably held under some sacred tree or on a sacred hill. There the assembled townsmen appointed the officials of the township—the *reeve* or headman, the *pindar* or common-keeper, the *beadle* or messenger—by the mouths of their elders declared *folk-right*, *i.e.*, customary law, and, with uplifted hands, "held men to witness," *i.e.*, recorded certain transactions in their memories. Somewhat later, the township began to send its reeve and four "best men" to represent it in the courts of the hundred and

The original "town."

Town meeting.

shire; and the "best men" were probably chosen in the town meeting. As to the origin of this primitive organisation there is keen dispute; and we do not deal here with controversial matters. But the existence of the organisation seems indisputable. How did this secular organisation acquire the ecclesiastical name of 'parish'?

Introduction of Christianity.

The ancient Britons had been more or less Christianised before the arrival of the English; but the latter were pure heathens, and utterly refused to acknowledge the British Church, probably because it was organised on a tribal model unsuited to their ideas. So they remained heathens until, at the close of the sixth century, the Benedictine monk Augustine converted Ethelbert of Kent, and founded the see of Canterbury. From that time Christianity spread rapidly throughout the English kingdoms, until, before the lapse of a century from the landing of Augustine, the Church was ripe for organisation on a national basis.

The parish and the township.

The work of organisation was undertaken by Archbishop Theodore; and he, in making his plans, wisely adopted existing institutions. The bishops' sees were already identical with the heptarchic kingdoms; though he subdivided them, he carefully followed the lines of the older sub-kingdoms, out of which the heptarchic kingdoms had been formed. Later on, the archdeaconries and rural deaneries corresponded with the shires and the hundreds. But in Theodore's time there was little between the bishop of the kingdom and the priest whose sphere was a township; and, accordingly, priest and township were by him treated as natural connections. And as the early missionaries were often at least as much Greek as Latin (Theodore himself came from Tarsus in Macedonia), it is no wonder that the township came to be called, by ecclesiastics, a *parish*, that is, the dwelling-place (*paroikia*) of a priest. True that township and parish were in many cases not identical, even in ancient times. But the very differences show how the two were connected in men's minds. In the south of England, where population was comparatively thick, two parishes were often

formed out of one township; in the north, where population was scanty, and the supply of priests apt to run short, two or three townships went to a parish, always, however, preserving their ancient identity. Very rarely did the boundaries of parishes and townships cut one another until recent changes took place. A township not included in a parish came to be stigmatised as 'extra-parochial,' and was looked upon with suspicion.

Decay of the township.

Then came the decay of the township as an institution. This process, due to the corresponding rise of the feudal institution known as the *manor*, need not be more than hinted at here, for the manor has long since ceased to be an organ of local government. Suffice it to say, that the rise of that peculiar social system which we call *feudalism*, the main idea of which is the dependence of the vassal upon the lord above him, as opposed to the *inter-dependence* of the members of a co-operative group like the township, gradually drew away the life from the town meeting on the hill to the court held in the hall of the lord who had his manor or dwelling in the township,[1] until at last the town meeting, as a separate institution, almost disappeared.

The manor.

The Lord's Court.

The Vestry.

Meanwhile the parish priest had not been idle. At first, no doubt, he took a prominent part in the town meeting; and ecclesiastical and secular matters were there discussed indiscriminately. But the Church did not in the least intend to allow her affairs to be settled in the manorial courts. On the contrary, in the later Middle Ages, she began to draw more and more away from secular affairs, and to aim at isolated and purely ecclesiastical organisation. This is the meaning of the great struggle between the kings and the archbishops, which lasted from William II. to Edward I., and which was revived once more at the time of the Reformation. One result of this great movement was, that the parish

[1] A section (the 7th) of the Vestries Act of 1818 raises a strong presumption that in extra-parochial places the town meeting survived the introduction of the vestry system elsewhere.

priest now gathered his flock round him in the *vestry* or robing-room of the church, when he wished them to dispose of ecclesiastical business. Here he was secure from secular interference; for the lord and his steward would not venture to dispute his pre-eminence in the sacred building. Thus was the town meeting deserted on both sides.

But, in course of time, the feudal system itself decayed, and local government in England became almost extinct. The parish vestry came to be recognised as a regular meeting, and gradually acquired a few of the powers which had fallen away from the decaying courts of the manor. But its position with regard to them was purely traditional; the vestry had no legal powers. It was not till the general break up of medieval conditions brought to the front a question of appalling magnitude, requiring wholesale treatment, that the parish vestry secured a recognised position in secular matters.

Poor-relief.

This great question was the relief of the poor. The Great Plague of the fourteenth century, which had practically abolished serfdom, had given the bondsman a liberty which frequently meant liberty to starve. It was no lord's interest to feed the man whom he could not keep to labour. The Wars of the Roses had thrown a crowd of destitute and idle soldiers on the country. The dissolution of the monasteries added its quota to the general distress, by drying up a source of relief which had mitigated, while at the same time it had probably encouraged, the social evil. Something had to be done; and the Elizabethan statesmen, following up the tentative suggestions of their predecessors, laid down a comprehensive scheme which made each *parish* responsible for the maintenance of its own poor, and for the administration of its own poor-relief. There was no other local machinery suitable; and it seemed natural to associate the work of relief, which had always been looked upon as one of the primary duties of the Church, with an ecclesiastical institution. So the parish became the Poor Law unit; the Poor Law official, the

overseer, was to be chosen from, if not by, the parish vestry; and the funds necessary to enable him to carry out his duties were to be raised by a rate levied upon the householders of the parish.

The first great Poor Law.

From the date of the great Poor Law of 1601 we mark the revival of the parish or township as an organ of local government. One matter after another—highways, bridges, drainage, police, education—became parochial, until all, and more than all, the old powers of the town meeting were won back. But the township still retained its adopted name of 'parish,' and its meeting was still the 'parish vestry.'

Separation of parish and township.

During the last century a counter-movement set in, which tended again to draw a sharp line between the secular and ecclesiastical aspects of the township or parish. The great increase of population which followed upon the industrial revolution of the eighteenth century created a necessity for the sub-division of areas. New churches were required to meet the spiritual needs of the population, and new ecclesiastical districts (ultimately called parishes) were carved out of the old parishes for them. On the other hand, the Poor Law unit needed sub-division, and new 'poor law parishes' (as they came to be called) were created. But the two movements did not follow the same lines. Whereas the new poor law parishes virtually revived the older *townships*, of which two or three had gone to form the old northern parishes, the new ecclesiastical districts proceeded upon other methods. Again, the removal of the *administration* of the poor-relief from the parish to the Poor Law *Union*, by the Act of 1834, tended to weaken the connection between civil and ecclesiastical business in the parish. The introduction of 'select vestries' and, still more, of the recent 'parish councils,' has done, and will do yet more to emphasise the distinction, which may be said to have been completed by the recent steps taken by the Established Church, under the powers conferred upon it by the Church of England Assembly (Powers) Act of 1919, to set up in each ecclesiastical parish a 'paro-

Poor Law Amendment Act.

chial council,' concerned only with ecclesiastical business. So that, in a work on local government, we are entitled to leave the ecclesiastical parish altogether out of account, and to consider alone what is still called the *parish* or the *civil parish*, but what is really the old township in disguise. The connection of this unit with the subject of Poor Relief may be best judged from the fact that, by virtue of a recent Act of Parliament, the official definition of a civil parish was declared to be "a place for which a separate poor-rate is or can be made, or for which a separate overseer is or can be appointed." This definition has, by the great changes shortly to come into operation, become obsolete, and has been repealed; because the parish has, by these changes, ceased to be a Poor Law unit, except for one or two special purposes. But it is curious to note that the same Act of Parliament which abolished the overseers, and the poor rate as such, has still found it necessary to revive the definition, substituting only the past tense for the present. So difficult is it for an institution to separate itself from its history.

Civil and ecclesiastical parishes.

The parish a Poor Law unit.

At the outset of our description of the parish as a unit of local government, we are faced by a curious, and, at first sight, puzzling difficulty.

The great Public Health Act of 1875, which laid the basis of the present system of sanitary administration, divided the country into (i) urban and (ii) rural sanitary districts. Quite naturally, it made very different provisions with regard to the local authorities which should be entrusted with the carrying out of its provisions in urban and rural districts respectively, as well as with regard to the powers which they should exercise. Broadly speaking, the urban district was, and is, a comparatively small but densely populated area, governed by a specially elected Council; while the rural sanitary district was, and, until the pending changes take effect, will continue to be, a group of thinly populated parishes, being, in fact, a Poor Law Union *minus* the urban parts of it. This distinction was carried

further by the Local Government Act of 1894, which endowed rural parishes (*i.e.*, parishes within rural sanitary areas) with specially elected councils exercising certain powers, whilst it virtually ignored urban parishes. This was because, in most cases outside boroughs, urban sanitary districts were, in fact, also civil parishes, and because, having advanced machinery and powers of self-government under the Public Health Acts, they did not need separate parochial organisation. In fact, under the Act of 1894 (or, in London, under a special Act of 1899) the non-ecclesiastical powers of the old vestries within urban areas have been transferred to the urban councils. An account of the sanitary authorities will be given in its proper place. Here we are concerned to notice that the only kind of parish endowed with a separate governing body for secular purposes only is—

The Rural Parish.

The Local Government Act, 1894, created a new legal entity, the 'rural parish.' In defining an urban parish, we may describe it as any parish which is contained within the area of an urban sanitary district, that is to say, of a municipal borough, or a district governed under the Act of 1894 by an urban district council.[1] Negatively, then, we may define a rural parish as a parish which does not fall within any one of these areas; positively, as a parish which falls within a rural sanitary district. A rural sanitary district was originally, as has been said, a Poor Law Union or any part of a Poor Law Union which did not fall within an urban sanitary district as above defined; or, putting it in another way, an area in which the Guardians of the Poor until 1894 acted as the sanitary authority.[2] 56 & 57 Vic., c. 73.

The Act of 1894 introduced a further classification. Under it rural parishes fall into two classes—(*a*) those Two classes of rural parishes.

[1] See *post*, p. 72.

[2] The Local Government Board issued in December 1905 a return of "county boroughs, other boroughs, urban districts other than boroughs, and rural districts" in England and Wales, showing changes of area down to October 1, 1905.

which have parish meetings *and* parish councils; (*b*) those which have only parish meetings. The lines of separation are thus drawn by the Act. Every rural parish which, by the census of 1891, had a population of 300, fell into class (*a*); every other rural parish fell *primâ facie* into class (*b*). But the parish meeting of a parish having a population between 99 and 299 may compel its county council to provide for the establishment in it of a parish council; and, even in the case of a parish with a still smaller population, the county council may (if it thinks fit), with the consent of the parish meeting, make a similar provision.[1] Small parishes[2] may also, but with their own consent, be grouped by the same authority under a common parish council; but *every* rural parish will have its distinct parish meeting.

The parish meeting.

Obviously, then, we must first examine the **parish meeting.** This, like the old parish vestry, is a primary, not an elected body; but the terms of membership are very different from those of the vestry.

Parochial electors.

The persons entitled to attend a parish meeting are known as the 'local government electors' in the parish. Fortunately for the student, the differences between the franchise for the various units of local government have now practically disappeared; and, as a result of very recent legislation, known as the Representation of the People Acts, 1918 and 1928, there is a uniform local government franchise for all purposes. It consists, primarily, of the *occupation*, as owner or tenant, of land or premises[3] within the electoral area; but, in order

[1] The Act of 1894 expressly makes the census of 1891 the criterion; but the census of 1921 now is, being "the last published census for the time being."

[2] The section does not in express terms confine the power of grouping to the parishes with a population of less than 300, but the context implies that this limit must be adopted.

[3] Incidentally, it may be noted that the common word "premises" is not defined by the Acts; though there is much doubt about its legal meaning. It is probably intended to cover interests connected with land, which do not carry possession

to carry out the 'equal franchise' policy of 1928, husbands or wives of occupiers, *resident* with them in the qualifying premises, are also entitled to the vote. Inasmuch as the difference between occupation and residence may not be quite clear to non-legal readers, though it is important for legal purposes, it may be pointed out, that 'occupation' means, broadly speaking, exclusive possession of, while 'residence' means, again speaking broadly, actually living in, the premises in question. Of course the same person may be, and frequently is, both occupying and residing in the same premises, *e.g.*, the ordinary householder. On the other hand, he may not, as, for instance, in the typical case of the business man who rents an office in a big town, but lives at a house in the suburbs. In such a case, his wife, if living with him, gets a local government vote in respect of the house, but not of the office. If both office and house are in the same electoral area or constituency, this will not matter; for no one can now have more than one vote in the same constituency. But, if they are in different constituencies (as frequently happens), the distinction is important.

As is well known, the Act of 1918 only conferred the local government franchise on wives of resident occupiers at the age of thirty. The Act of 1928 merely requires the ordinary full legal age of twenty-one; and it also confers the vote on husbands residing with their wives in premises occupied by the latter. Such persons are, since 1894, technically known as 'parochial electors.' At a parish meeting each elector has one vote and no more; and the same rule holds even upon a poll, which, if demanded, is to be taken by ballot. It is an important condition of the right to vote at a local government election, that the would-be voter's name must appear on the current 'electoral register' which is annually drawn up, in boroughs by the Town Clerk,

of the surface of the soil, *e.g.*, fishing and mining rights. For rating and some other purposes, these may be '*occupied*'; though, of course, they cannot be the subject of '*residence*.'

and, outside boroughs, by the clerk of the county council. Objections may be raised against the omission or exclusion of any claimant, but such objections must be settled before the election by the registration officer, from whose decision an appeal lies to the county court, and even, on a point of law, to the Court of Appeal.

Annual assembly.

Every parish meeting must assemble at least once a year, in the month of March ; and its proceedings must not commence before 6 p.m. Other meetings may at any time be summoned by the chairman or any two members of the parish *council*, or by the chairman or any six members of the parish meeting. Usually the chairman of the parish council will be chairman of the parish meeting; but if, for any reason, he is not present, the meeting will elect a chairman.

Chairman.

Functions of parish meeting:—(*a*) Where there is a parish council.

Where the parish has a council as well as a meeting, the chief business of the latter body will be the triennial election of parish councillors. But it will have other important functions. In the first place, it will act as a critical body, having the right to "discuss parish affairs and pass resolutions thereon." Inasmuch as every parish councillor will know that he must (if he wishes to keep his seat) face the parish meeting in less than three years' time, he will probably pay a good deal of attention to the discussions and resolutions of a parish meeting. But, in the second place, there are certain acts which a parish council will be able to do with, but not without, the consent of its parish meeting ; and upon such matters the parish meeting will, of course, have a decisive voice. Such are, for example, the adoption of certain reforms which could formerly only be introduced with the goodwill of a majority of the inhabitants, but which are now left to the decision of the parish meeting,[1] and the incurring of expenditure which will amount in any one year to a sum exceeding a fourpenny rate or involve a loan. And, finally, even where a parish council exists, the parish meeting still exercises certain independent powers. It is able to

Consent to acts of parish council.

[1] These contingencies are discussed at the end of this chapter.

forbid the parish council to consent to the stopping up of a public right of way, or to declare that a highway is unnecessary. It has succeeded to the position of those "owners and ratepayers" who must be consulted about any dealing with parish property, under various Acts, such as the Literary and Scientific Institutions Act, 1854. The annual accounts of the parochial charities have to be laid before it; and its consent is necessary to enable the parish council to oppose or support any scheme for the readjustment of a parochial charity.

(*b*) Where there is no parish council.

But it is in parishes where there is no parish council that the powers of the parish meeting are greatest. Then it will, virtually, exercise all the rights which, as we shall immediately see, are usually exercised by the parish council in respect of appointing committees, performing the secular business formerly belonging to the vestry, appointing charity trustees and certain of the school managers, and in regulating the stopping up of footpaths; and the property belonging to the parish, formerly vested in the churchwardens and overseers, will now, under the Overseers Order, 1927,[1] vest in the parish meeting. The power of the meeting to incur expenses is at present limited to an eightpenny rate. It will be possible, however, for the county council to confer on the parish meeting, at its own request, any other of the powers of a parish council. Where there is no parish council, the parish meeting must assemble at least twice a year.

The parish council.

The **parish council** is a representative body which exists in every rural parish having a population at the last census of 300 souls, and in those other rural parishes or groups of parishes where it may be created by order of the county council. It must consist of not less than five nor more than fifteen councillors, as may be from

See *ante*, p. 20.

[1] The extent of the powers still remaining to the overseers up to the time of their abolition by the Rating Act of 1925 may be gathered from a perusal of the Schedule to this Order-in-Council, which was issued in pursuance of the Act.

time to time determined by the county council. Its members are triennially elected by the parish meeting at its Lady Day assembly, and come into office on the 15th April. Any 'elector' of the parish (*i.e.*, any one entitled to take part in the parish meeting), male or female, and any person who has resided since the next previous Lady Day within the parish, or within three miles thereof, or is an owner of landed property therein, is eligible for election, unless—

Qualification of members.

Disqualifications.

(i.) During a year preceding the election he or she has been in receipt of poor relief, in the strict sense,

(ii.) During five years preceding the election he or she has been sentenced to imprisonment with hard labour or any greater punishment, or has been made bankrupt or compounded with creditors,

(iii.) He or she holds paid office under the parish council, or is pecuniarily interested in any contract made with the council. (But in the latter case the disqualification may be removed by the county council if it thinks that such removal will be beneficial to the parish.)

Where the full number of places in the council is not filled up at the triennial election, such of the retiring councillors as are willing to serve, in order of their votes at the last election, are entitled to retain their seats until the list is full. Casual vacancies occurring at other times will be filled up, from duly qualified persons, by the council itself. All retiring councillors are re-eligible at any election.

Parish wards.

In the absence of special provision, each councillor will be elected by the electors of the whole parish. But, upon the application of one-tenth of the electors, the county council may divide a parish into electoral *wards*, each of which will, for electoral purposes, constitute a separate parish, with a separate parish meeting; and the councillors will be distributed amongst the different wards. It is a little difficult to tell for how many purposes other than electoral the wards can

be considered separate parishes ; [1] but it seems clear that no division into wards can be made in a parish which has not a council.[2] Apparently, there is no rule that a councillor must reside in the ward which he actually represents.

Annual meeting.

The parish council must hold an annual meeting within seven days of 15th April, and at such annual meeting elect a chairman (or chairwoman), who, in the absence of contingencies, will continue in office until his or her successor is appointed. It is his duty to summon the annual meeting and any other (not less than three in the year) which he may think desirable ; and he may be compelled by two councillors to summon a meeting at any time. The council may also, if it pleases, elect a vice-chairman, to act in the chairman's absence. A council meeting cannot proceed to business unless at least one-third of its members (with a minimum of three) are present.

Quorum.

Powers of parish council.

Immediately upon coming into office, every parish council became a legal corporation, with power to hold property and to signify its acts by document executed by the chairman and any two members present at a meeting. It immediately took over certain powers and interests formerly belonging to other bodies or persons ; and it also acquired certain new powers. Perhaps we should distinguish between these two classes of acquisitions.

A. Transferred powers.

Class A. The powers and interests *transferred* in 1894 to the parish council may be summarised thus—

Of vestry.

(i.) The powers, duties, and liabilities of the **vestry** of the parish (except those which relate to the affairs of the church or to ecclesiastical charities, or are specially given to other bodies by the Act).

Of churchwardens.

(ii.) The powers, duties, and liabilities of the **churchwardens and vestry,** with similar exceptions.

Of overseers.

(iii.) The powers, duties, and liabilities of the **overseers** with respect to—

[1] *See* Local Government Act, 1894, § 49(*b*) and § 7(4).
[2] *Ib.*, § 18.

(α) Appeals or objections in respect of valuation list or rates (revoked by recent legislation).

(β) The provision of parish books, parochial offices,[1] fire engines, and fire escapes.

(γ) The holding and management of parish or public property (other than ecclesiastical).

Of guardians.

(iv.) The powers of the **guardians of the poor** in respect of the sale, exchange, or letting of parish property. [This virtually means that the council is able to dispose of any parish property, subject, in the case of dealing with *land* (other than the letting of allotments), to the approval of the Ministry of Health, and, in the case of the *sale* or *exchange* of land, to the consent of the parish meeting.]

See *post*, p. 61.

Of inhabitant householders.

Of parliamentary electors.

(v.) The power of making complaints and representations conferred upon **inhabitant householders** by the Housing of the Working Classes Act, 1890,[2] and on **parliamentary electors** by the Allotments Acts, 1887 and 1890 [3] (but without prejudice to the rights of such persons).

Of allotment wardens.

(vi.) The powers and duties of any **allotment wardens, committee,** or **managers** constituted by *any* Act of Parliament.

Of Justices.

(vii.) The power and duty, formerly exercised by the

[1] By the old law overseers might provide parochial offices at the expense of the poor-rate in any parish containing a population of 4000, but only with the consent of the vestry and the Local Government Board. (The Parochial Offices Act, 1861.)

[2] By the provisions of this Act, four or more inhabitant householders may compel a medical inspection and report upon buildings alleged to be unhealthy or obstructive. The Act of 1890 has been replaced by later and more elaborate legislation, notably the Housing Act, 1925, and the Housing (Rural Workers) Act, 1926. But the powers of the parish council have been preserved.

[3] These Acts enable six registered electors or ratepayers to represent to the sanitary authority (or, failing that, to the county council) the necessity for the provision of land for allotment purposes. These Acts have also been replaced by more modern legislation, which has conferred increased powers on the parish council.

Justices of the Peace, of appointing *overseers of the poor*, and of appointing and dismissing assistant overseers. Overseers and assistant overseers having, however, been abolished by recent legislation, this function of the parish council has been revoked. The parish property (other than ecclesiastical) formerly vested in the overseers, or in the churchwardens and overseers, has passed to the parish council.[1]

Class B. The new powers and interests conferred upon the parish council are chiefly these— B. New powers.

(i.) To provide and manage buildings and land for parish purposes (including recreation), and even (with the consent of the county council) to acquire land compulsorily for such purposes. Public buildings and land.

(ii.) To utilise any water within the parish for purposes of water supply, to take measures for preventing the spread of danger from stagnant water or refuse, and to acquire by *agreement* any right of way for the benefit of the parish. (But these proceedings must respect private rights; and there is no compulsory power of acquisition.) Water supply.

(iii.) To hire and manage land for the purposes of allotments. (If necessary, the parish council may obtain leave from the county council to hire land compulsorily for a period of from fourteen to thirty-five years.) [2] Allotments.

(iv.) To borrow, with the approval of the county council and the Ministry of Health, such sums as may be necessary for executing permanent works. Loans.

(v.) To undertake the repair and maintenance of any Footpaths.

[1] This rule applies even where the overseers were jointly entitled with other persons as trustees of a parochial charity. The council can appoint a similar number of its members as trustees in the place of the overseers.

[2] The policy of encouraging the development of allotments (*i.e.*, small areas of land devoted to the cultivation of vegetables, fruit, etc.) has, since 1894, been greatly extended, notably by Acts of Parliament of 1922 and 1925.

public footpaths within the parish, other than footpaths at the side of public roads.

Public benefactions.

(vi.) To accept any property offered for the benefit of the inhabitants of the parish, and especially to receive a transfer of their property from any trustees who may hold it "for any public purpose connected with a rural parish, except for an ecclesiastical charity."

Charities.

(vii.) To oppose or support any scheme relating to any charity (other than an ecclesiastical charity) which affects the parish. But to take any such step the consent of the parish meeting is required.

Sanitary authorities.

(viii.) To complain to the county council in the event of a rural sanitary authority neglecting its duties in the matter of water supply or the repair of highways.

Clerk of the parish council.

To enable it to perform these functions, the parish council may appoint one of its number to act as clerk, without remuneration; or it may impose the duty upon a collector of rates or other fit person at a remuneration. The clerk of the council succeeded to the powers of the parish clerk in the matter of the custody of documents ordered by statute or standing order of Parliament to be deposited; but he has not the right to the custody of the registers of births, deaths, and marriages, and other ecclesiastical or quasi-ecclesiastical parish documents. When there is no clerk, the chairman of the council acts as custodian of documents. The parish council may also appoint one of its own members to act as treasurer without remuneration.

Parish rates.

The parish council has no direct power to make a rate, but it has the power to incur expenses to an amount not exceeding in any one year a fourpenny rate without any special sanction; the former limit of its powers having been increased by the Local Government Act of 1929, to the extent of one-third. For expenses involving a larger amount it will require the consent of the parish meeting, but the extreme limit (exclusive of expenses under 'adoptive' Acts) is an eightpenny rate, which

will have to include all annual charges payable in respect of loans. If a loan is contemplated, the consent not only of the parish meeting, but of the county council, will be necessary before the step is taken. The expenses of the parish meeting will be included in the expenses of the parish council. The amount chargeable on the rates has finally to be raised by precept or demand to the rating authorities, who will include the amount in their general or special rate for the year.

See *post*, p. 144.

This was, in outline, the scheme of the Local Government Act of 1894. Its object was, evidently, to add largely to the powers of self-government enjoyed by the rural parish, and to concentrate those powers in the hands of a single authority. When the scheme was first brought into force, there were about 13,000 parishes comprised in rural sanitary districts; [1] and in about 6880 of them parish councils were elected. A political experiment made on so vast a scale gave rise to considerable expectations and not a few fears. The result has somewhat disappointed the prophets. The parish councils were soon found to have far too little spending powers to effect any revolution. Interest in them, warm at first, was rapidly chilled. They have chiefly been of practical value for the better management of village charities, and for the improvement of such services as lighting and water-supply, which before were unduly backward in rural districts.

Optional functions of the parish.

Before concluding the subject of the parish, it is necessary to point out that, while the sphere of the normal parish is confined to the subjects previously described or alluded to, a parish *may* be an unit for the regulation or administration of other matters. Whether any particular parish is in fact such an unit, is a matter for enquiry in each case. These matters are, briefly, police and certain sanitary and educational matters provided for by 'adoptive' Acts of Parliament, *i.e.*, Acts which

[1] These figures are taken from a Return furnished to the House of Commons in July 1893 by the Local Government Board.

may or may not be adopted by any parish according to its discretion. Of these in order.

1. **Police.**—The control of the police arrangements of the country appears originally to have been in the hands of the Hundred, whose *leet jury*, or petty criminal court, appointed, or enforced the appointment, of the *constable* and *watch* in each parish or township. This is the primitive institution portrayed with such humour in *Much Ado about Nothing*; and it is clear that, even in Shakespeare's day, Dogberry and his companions were regarded as somewhat antiquated machinery. Recent legislation has practically transferred police matters to the authorities of the county and the large borough; but there are still two cases in which, under the provisions of the Parish Constables Act, 1872, a parish may have its own police.

Parish constables.

(*a*) When a county or borough force is certified as insufficient by Quarter Sessions, the Justices at Petty Sessions must appoint **parish constables,** who are (in the absence of proper excuse) compellable to serve, and are paid small fees out of the general rate.

Paid constables.

(*β*) When the rating authority (*i.e.*, the district council) or (in the case of a rural parish) the parish meeting or council, of a parish *which is not within a borough*,[1] resolves that the appointment of a **paid constable** or **constables** is desirable, it may require the Justices to appoint accordingly; and the salaries of such constables will be payable out of the general rate.

We now come to those improvements which it is in the power of the parish to adopt or not, as it pleases.

2. **Burials.**—Where the accommodation provided by the churchyard or other cemetery is insufficient for the wants of a parish, the urban council (in

[1] It must be carefully remembered that there are many urban parishes which are not comprised within the limits of boroughs.

rural parishes, the parish *meeting*) has the power of adopting the "Burial Acts, 1852 to 1906," *i.e.*, a series of statutes aimed at providing increased burial accommodation. If the council or meeting so decides, it appoints a Burial Board of from three to nine ratepayers, one-third of whom retire annually; and this Board provides and maintains a new burial ground under the regulations of the Acts. To pay its expenses, the Board is entitled to demand from the rating authority such sums as the council or meeting shall approve; and these sums are raised out of the rates in the usual way. The accounts of the Burial Board are audited by two auditors, annually elected by the council or meeting. But an order of the Privy Council may constitute any *urban* sanitary authority the sole burial authority within its district; and, by consent of all parties, without an order, a Burial Board may transfer all its property and functions to the *urban* sanitary authority in whose district its parish is situate. At the close of the financial year 1914–15, there were, in England and Wales, 157 Burial Boards, with an expenditure during the previous twelve months of nearly £63,000. Where, on the coming into office of a parish council, the area of a Burial Board was identical with that of a rural parish, the Burial Board merged in the council;[1] where the area was that of several rural parishes, in a joint committee of the several parish councils. But where such a parish or parishes had no council but only a parish meeting, the Burial Board was allowed to survive.

Burial Board.

3. **Public Libraries, Museums, &c.**—The parish meeting in a rural and the urban council in an urban parish may resolve to adopt the Public Libraries Act, 1892; and the electors may decide the question by a simple majority. If they decide

[1] The council is authorised to appoint a Burial Committee, which will be, virtually, the old Burial Board.

in favour of adoption, they *may* also (if asked) specify the limit of expense to be incurred in carrying out the scheme; but, if they do not, the checking of excessive expenditure will be left to the Ministry of Health.[1] Upon the adoption of the Act the council will proceed to carry out the scheme by the provision of free libraries and museums, schools for science, art galleries, and schools for art, to the extent of its means. When there is no council, the parish meeting will appoint the executive authority. In urban areas it is the sanitary district and not the parish which constitutes the Library district. But these, as we have seen, are, outside boroughs, frequently the same thing.

Other 'adoptive' Acts there are, by which a parish can provide itself with conveniences and luxuries; but it is impossible to go into details. The chief examples are lighting and watching (Act of 1833), baths and wash-houses (Acts of 1846 to 1925), and walks and recreation grounds (Public Improvements Act, 1860). For particulars the reader is referred to the statutes themselves. Enough has been said to show how such parochial machinery works. Broadly speaking, in the urban parish the sanitary council is the authority for adopting the Acts, the council's approval being necessary in all cases; in the rural districts, the parish meeting adopts, the parish council executes.

Lighting and watching.

Baths and wash-houses.

Walks and recreation grounds.

[1] The system of public libraries has recently undergone drastic revision by the Public Libraries Act, 1919, which tends to make it a county scheme. One notable change is the abolition of the limit to the proceeds of a penny rate as the maximum amount which the adopting authority can spend under the Acts.

GROUP B

THE HUNDRED AND ITS ANALOGUES

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CHAPTER III

THE HUNDRED

THE **Hundred,** or **Wapentake,** has to-day only an historical interest. It is impossible to trace with certainty the origin either of the institution or of the areas which now bear its name. As to the former, historians are divided between views which assign to the Hundred the character of an ancient tribal division, corresponding with the Continental *gau* (the *pagus* of Tacitus), and other views which regard it as the deliberate creation for administrative purposes of a German or English monarch. Perhaps the orthodox view is that the Hundred represents an ancient tribal organisation which Frankish kings in the sixth century, and our own Edgar in the tenth, revived for police purposes. An institution which needed to be revived in the sixth century must be aged indeed. And the circumstances of the actual hundreds add weight to the theory of the hoary antiquity of the institution; for the arrangement of them seems to be based on no uniform or reasonable plan that we can account for by historical evidence. Their extent and numbers appear to be quite arbitrary. The county of Leicester has but six hundreds, the county of Sussex (less than twice its size) has sixty-four. The small county of Oxford has exactly the same number as the far larger western Shropshire. Devon has thirty-three hundreds; the adjoining county of Somerset (far smaller) has forty-three. All that one can say is, that apparently the hundreds were more numerous in the parts in which the early Teutonic invaders settled most quickly and

Distribution of hundreds.

Names of hundreds.

thickly. The same presumption of antiquity may be gathered from the fact, that the places from which a vast number of hundreds derive their names have dwindled into insignificance, or disappeared entirely; while gigantic towns have grown up beside them. London is locally situated in the hundred which took its name from (or gave its name to) the forgotten site of Ossulston. The great city of Liverpool is within the hundred of West Derby; the latter being a village which, after centuries of obscurity, is again rising into importance as a suburb of Liverpool. Birmingham appears to be in the hundred of Hemlingford. The reader will not find Hemlingford in the voluminous pages of 'Bradshaw.'

The character of early hundreds.

As we have said, the Hundred comes first into authentic history as a *police district*, whose inhabitants were made liable for the discovery of the perpetrators of robbery and other crimes of violence committed within their district. It was natural, therefore, that their court, or *leet*, should have the power of enforcing and regulating the still older system of *village police*, and that their *hundredman*, or elder, should be looked upon as the head of the police force of his district.

The High Constable.

The hundredman of Saxon times seems to have developed imperceptibly into the *High Constable* of the thirteenth century, an official who, as the leet jury sank into oblivion, gradually acquired great powers. The Tudor policy, however, subordinated him to the Justices of the Peace, by whom (in default of special franchise) he was appointed, whose rates he collected, and whose duties in connection with the Statutes of Labourers he aided by holding *statute sessions* for the hiring of servants. Meanwhile, the old police character of the Hundred survived in the liability of its inhabitants for the repair of certain roads and bridges, and for the making good of damages done by riot. The latter liability was transferred to the *county* or the *police borough* by the Riot Damages Act of 1886, which makes the police authorities (including the

Roads and bridges. Riot.

Receiver of the Metropolitan Police), liable to be sued for compensation by the private person whose property has suffered damage in a riot in their area.[1] But the former remained till 1894 in a few cases, and was recognised by the Local Government Act of 1888 (the "County Councils Act").[2] The most important session of the Hundred Court, that of the Sheriff, who held his 'Tourn' for the purpose of seeing that the police machinery was in full working order, has, after long decay, now been expressly abolished by statute. Other hundred courts do here and there exist; and the caprice of the legislature has, within the last half century, made of one or two hundreds special areas for probate purposes. But, virtually, the Hundred is extinct as an institution; and we have only referred to it because its decay has led to the appearance of certain substitutes. The High Constable himself is in process of painless extinction, by virtue of a statute of the year 1869; and, while he remains, perhaps the utmost one can say of him is—that he is a High Constable. His surviving duties will in future be divided between the clerk of the Petty Sessional Division and the Chief Constable of the county. Still, we cannot say that the Hundred is quite dead. Quite late in the Victorian era, it was thought advisable to pass a solemn Act of Parliament for the sole purpose of bringing a part of the hamlet of South Town, in the parish of Gorleston, into the hundred of East Flegg.

Sheriff's Tourn.

The Sheriffs Act, 1887.

The High Constables Act, 1869.

See *post*, p. 39 and p. 153.

[1] The liability of the Hundred for robbery seems never to have been entirely abolished, though it is never heard of nowadays. But a characteristic statute of the year 1678 deprived the Sunday traveller of his rights in that connection. Perhaps this was the beginning of the end.

[2] Section 3(i).

CHAPTER IV

THE PETTY SESSIONAL DIVISION

THE four great institutions which have taken the place of the decaying Hundred are the Petty Sessional Division, the County Court District, the Poor Law Union, and the Sanitary District. With the exception of the last, each of these institutions serves at least one of the purposes for which the Hundred was formerly used; and the last is, historically, so bound up with the Poor Law Union, that it must plainly be treated as a member of the same group. The Sanitary District in most cases (but not all) coincides in area with some older institution, such as the Poor Law Union or the parish. The Petty Sessional Division, the County Court District, and the Poor Law Union have no necessary connection in area, though, for obvious convenience, they are frequently made to approximate, or even to become identical.

33 Hen. VIII, c. 10.

The Petty Sessional Division, or at least the idea of it, appears to date from 1541. By a statute of that year, the Justices of every county were directed to divide themselves according to "Hundreds, Wapentakes, Rapes, Commotes, or Number of Towns and Villages," assigning at least two of their number to each division, and holding frequent sessions therein, in addition to their "ancient Quarter Sessions" for the whole county. Although this statute was repealed in 1545, the notion which it propounded has constantly been revived; and it gives us a very good idea of the Petty Sessional Division of the present day. The Petty Sessional Division is, primarily, a division of a judicial

37 Hen. VIII, c. 7.

county made by the Justices of the Peace for that county in Quarter Sessions assembled, and alterable every three years. Although, in theory, every Justice of the Peace can act in any part of his county, in practice, and for convenience' sake, he acts only in that Petty Sessional Division in which he resides, and in the General Quarter Sessions for the whole county. But it will be seen hereafter, that there are Justices of the Peace not only for the county, but for some boroughs, and that some districts have also professional Justices known as 'stipendiary magistrates.' And it must be remembered that every 'sitting and acting' of borough justices or a stipendiary magistrate is deemed to be a Petty Sessions, and the district for which it is held a Petty Sessional Division.

When we come to deal with the County we shall consider the nature of the office of Justice of the Peace. At this point we are concerned with the Justice only as the resident magistrate of a Petty Sessional Division. And it is enough to say that a Justice of the Peace is a magistrate with minor criminal and some administrative jurisdiction, appointed by the Crown to act within the limits of a county or a borough, receiving in fact no remuneration for his services, and being, in the majority of instances, without professional training in the law. The Justices who act in a Petty Sessional Division are those who reside within its limits, or, in the case of a borough, those who live sufficiently near to be able to act. But this is no rule of *law*, merely a doctrine of practice. In theory (be it again stated) every Justice can act in every part of his county or borough. There is, however, a real rule of law that for most purposes a Petty Sessional Court cannot be constituted by less than two ordinary Justices; although, by the terms of legal arithmetic, one stipendiary magistrate is generally equivalent to two ordinary Justices. The Justices "acting in and for" a Petty Sessional Division elect their own chairman, either *pro hâc vice* or permanently, and appoint their own clerk, who must not act as clerk

Post, p. 121.

Justices' Clerks Act, 1877.

to the Guardians of any Poor Law Union in which any part of his Division is situated. The salary of the clerk and the other expenses of the Division are paid by the county or borough council out of the county rates or borough fund.

Jurisdiction of Petty Sessions.

The jurisdiction of a Petty Sessions is twofold. It acts as a minor court of justice in criminal and (though rarely) in civil matters; and it also performs the duties of an administrative board. We must keep these two functions distinct.

Judicial.

(*a*) *Justice.*—There are certain breaches of the law which are taken in hand directly by the State, whether or no they appear to result mainly in damage to individuals. These breaches of the law we call *crimes*. Other offences are left to be remedied upon the application of the injured party; these we call *civil wrongs*. With this latter class Justices' Courts have very little to do [1]; with the former they are much concerned.

Crimes.

Civil wrongs.

Indictable crimes.

Crimes summarily punishable.

Crimes again fall, according to English law, into two great classes of (*a*) indictable offences, and (*b*) offences punishable on summary conviction. The former, which comprise all the more serious crimes, can only be tried by a Court through the medium of a jury, whose verdict convicts or acquits the accused, whose alleged crimes are set out in a formal document, or 'indictment.' Such a document cannot even be drawn up unless the accused has been 'committed for trial' by a magistrate. Offences summarily punishable are minor offences, or serious offences attended by mitigating circumstances; and they are tried and disposed of in an informal way.

With each of these classes of offences the Petty Sessional Court has much to do; but its functions

[1] Owing to historical causes, disputes between masters and servants, even of a purely civil nature, long remained matters for the magistrates. As the result of changes in the law, very few of these now come before Justices of the Peace. The enforcement of rates, however, is largely a matter for Petty Sessions, though non-payment of rates can hardly be considered a crime.

differ greatly according to the class of offences involved. Broadly speaking, it may be said, that the jurisdiction of the Petty Sessional Court with regard to indictable offences is only *preliminary*; in respect of offences punishable upon summary conviction it is *decisive*.

Indictable crimes.

First, with respect to indictable offences. Here the duty of the Petty Sessional Court is to see whether there is a *primâ facie* case against the person who is accused, either by the police authorities or by a private individual, of having committed such an offence within the county. With this object the Court hears the witnesses for the accuser, records their evidence, and makes up its mind whether, in the absence of contradiction, there is reasonable ground for believing that a jury *might* convict the accused. The latter is always present at the enquiry, and may, if he pleases, cross-examine the prosecutor's witnesses, and call witnesses of his own. But if there is no reasonable hope that the Court will dismiss the charge as groundless, he usually avoids doing so, preferring not to shew his hand. The accused cannot be compelled to answer any questions; for the examination is not an examination of him, but of his accuser, or, at least, of the charge which the latter brings forward.

Committal for trial.

If the Court thinks that there is a *primâ facie* case, it commits the accused for trial at the next Quarter Sessions or Assizes (according to the nature of the case and the date of the earliest sitting); and he is there solemnly accused (or 'indicted'), unless indeed the grand jury should decline to allow the proceedings to go on. During the preliminary proceedings, the Petty Sessional Court has often to decide whether it will 'remand' the accused to custody or release him on *bail*,[1] *i.e.*, security to appear again when wanted; and a similar question arises if the Court decides to commit the accused for trial. Moreover, other matters of considerable importance, such as the binding over of prosecutor and witnesses to appear at the trial, the disposal of property found on the accused, and so on,

Remand. Bail.

[1] As to the meaning and rules of bail, see *post*, p. 130.

continually arise to be dealt with in this part of Petty Sessional jurisdiction. Inasmuch as the list of indictable offences includes all the graver crimes in the category—such as murder, arson, rape, burglary, forgery, perjury, and the like—the duties of a Petty Sessional Court involve heavy responsibility. For it would be equally disastrous to commit an innocent man to stand his trial upon a disgraceful charge, and to allow a guilty one to go free. It is satisfactory to know that, in the opinion of the late Sir J. F. Stephen (and few persons were better qualified to pronounce an opinion on the subject), innocent persons are very rarely committed for trial by the magistrates. As a matter of fact, about three-fourths of those committed are ultimately convicted; and doubtless a good number of those who escape are really guilty.

Crimes summarily punishable.

In the second place, the Petty Sessional Court has an important *summary* jurisdiction to hear and *decide* petty criminal cases. By virtue of the numerous Summary Jurisdiction Acts [1] and other statutes, a long list of offences can be tried and completely disposed of by a Petty Sessional Court. Such offences are common assaults, small wilful injuries to property, small larcenies,[2] offences relating to game, offences against railway and municipal by-laws, minor revenue offences, and many others. These are punishable on summary conviction in all cases. But there is also a growing class of offences which are primarily the subject of indictment, but which, under certain circumstances, may be summarily disposed of. These circumstances may consist in the fact that it is the offender's first appearance before a court of justice, that he is a juvenile offender, or that, being an adult, he pleads guilty, or requests to be dealt

[1] The principal of these are the Acts of 1849, 1879, and 1884; but there have been many amendments.

[2] The reader must not be tempted to use in this connection the obsolete term 'petty larceny.' It would be very delightful to be able to define petty larceny as a larceny punishable by a Petty Sessional Court. But the facts are against us.

with at once, and so on. But it would be misleading to attempt to lay down the rules accurately. It is a nice point of casuistry whether the father of an illegitimate child is being punished for an offence when an affiliation order is made against him, or whether he is merely having his pecuniary relations adjusted by a State which has ideas on the subject of paternal duty. But, whatever the view taken of his case, it forms an item in the cause list of the Petty Sessional Court.

The great difference between the procedure in summary jurisdiction and that upon indictment is, that in the former case there is not, while in the latter there is, as has been said, recourse to a jury. Whatever may be said in defence of the jury system, its defenders cannot argue that it is expeditious. In cases of summary jurisdiction, the Petty Sessional Court hears the advocates and witnesses of prosecutor and prisoner, and comes to its own conclusion upon the evidence. When it has decided, it pronounces sentence forthwith. The Court's decision is that of a majority; but if the votes are equal, the prisoner is acquitted. There lies an appeal, as a general rule, from a *decision* of a Petty Sessional Court to the Quarter Sessions for the county, by which the case is re-heard. Further, on a point of law, the opinion of the High Court may in most cases be taken.

Different legal character of the Court in preliminary and summary jurisdiction.

We have spoken as though the composition of the Petty Sessional Court were the same in preliminary and summary jurisdiction. In practice it is. But, in theory, much of the preliminary work usually performed by a Petty Sessional Court *may* be done by a single Justice in his own house; while a final *decision* can never be given anywhere but in a court house, and only in rare cases by less than two Justices. A court house is either a Petty Sessional Court house, *i.e.*, "a place at which Justices are accustomed to assemble for holding special or petty sessions," or a place appointed by the Justices as an "occasional court house." And the authority of a single Justice, as well as the authority of any number

of Justices sitting in an "occasional court house," is limited to awarding a fine of 20s. or imprisonment for fourteen days; while a Petty Sessional Court, sitting in a regular court house, can inflict much severer punishments.

(*b*) *Administration.*—Quite apart from all this judicial business, and in spite of recent changes in the law, to be hereafter noticed, the Justices in Petty or (as it is sometimes called 'Special') Sessions perform a good deal of purely administrative or discretionary work. Good examples of this work are the renewal and transfer of liquor licences, and the revision of jury lists. Formerly, the Justices also granted licences to gang masters, game dealers, passage brokers, and emigrant runners; they issued pawnbrokers' certificates, they regulated fairs, and they enforced the statutes relating to petroleum and infant life protection. But in so far as they formerly had power to deal with such matters *out of session*, their power was, on the coming into operation of the Local Government Act of 1894, transferred to the sanitary authority. As in the case of the preliminary judicial enquiry, much (though not by any means all) of the administrative duty of a Justice which is now done in Petty Sessions, might, as a matter of law, be performed by a single Justice in his own house. The advantages of the existing practice are obvious. Had it been adopted a little earlier, the present decided tendency to deprive the Justice of his administrative character might not have set in. In some cases there is, in others there is not, an appeal from a resolution of Petty Sessions upon a matter of discretion. It would be impossible to state details. Where an appeal lies it is to the Quarter Sessions of the Justices for the county or borough, of which the Petty Sessions is, virtually, a local committee.

CHAPTER V

THE COUNTY COURT DISTRICT

THE first thing to be remembered about a modern County Court is that it derives its name, not from the area, but from the nature of its jurisdiction. The County Court District is very much smaller than the county; while there are but 52, or, at the most (reckoning divided counties), 59 judicial counties in England and Wales, there are upwards of 400 County Court Districts. Moreover, a County Court District may cut across the boundaries of a judicial county (which a Petty Sessional Division may never do), and thereby shew its entire independence of the county system. The origin of the name must be looked for elsewhere.

History of the County Court.

For some generations after the village and hundred moots had fallen into decay, the sheriff's court of the county, holden at monthly intervals, was the recognised tribunal for the disposal of petty cases, both civil and criminal. The tide was setting in favour of the royal administration of justice; and the sheriff was a royal official. On the other hand, the old local feeling was strong, and the county court of those days was a more or less popular assembly, in which the freemen of the county took substantial part. But the lawyers who were growing up round the King's central courts at Westminster had no special love for the sheriff. The sheriff fell into disgrace in the twelfth century; and his criminal jurisdiction was strictly limited by the new procedure, which reserved the trial of graver crimes to the King's judges on circuit. In civil busi-

ness, a statute of the year 1278 practically (though indirectly) limited the sheriff's jurisdiction to cases involving not more than 40s. value. Then the growing importance of the Justices of the Peace swept away the remaining powers of the sheriff as a judge in criminal cases, and left him only the small civil business. Even this was shared by the usurping franchises of the manorial courts, by the mercantile courts of the staple, and by the special local tribunals of the boroughs and other privileged places.

See *post*, p. 115.

Manorial courts.

Staple courts.

Municipal courts.

No wonder that the ancient county court dwindled into insignificance; the startling fact is that its rivals in civil business dwindled too. The manorial courts ceased to decide suits which did not directly affect manorial rights; the organisation of the staple disappeared; the borough courts ultimately decayed, along with other municipal institutions. And it remains one of the puzzles of English legal history to find out how the yeoman or small tradesman of the seventeenth and eighteenth centuries, who had a petty claim for the value of goods or services, could proceed to enforce it. Had he actually to try the case at assizes?

But, towards the close of the eighteenth century, the cry for cheap local tribunals for civil business made itself strongly felt, and was met in a most unscientific way by the creation of isolated Courts of Requests (or Conscience, as they were sometimes called) in such parts of the country as seemed most to need them. In most cases each court had its own private Act of Parliament, which prescribed its powers; and although these numerous private Acts were, by a statute of 1754, declared to be 'public' (*i.e.*, part of the general law of which judges are bound to take notice, even though their attention is not specially called to it), the evils of the original plan continued manifest. Accordingly, the present uniform system was started by a comprehensive statute of the year 1846, which swept away about a hundred Courts of Requests. The County

Courts of Requests.

First County Courts Act.

Court system was, therefore, called into existence, to fill the gap left by the disappearance of the old sheriff's County Court; and hence its name. But its scheme is very different from that of its predecessor. It has had palpable success, its scope has been more than once enlarged; and the law concerning it is now mainly to be found in the provisions of the County Courts Acts of 1888 to 1924.

The modern County Court. Civil jurisdiction.

The modern County Court, as distinguished from the Petty Sessional Court, is a court of *civil*, not of *criminal* jurisdiction. That is to say, it disposes of small disputes between one private citizen or corporation and another; it does not deal with the punishment of offenders by the State. On the other hand, it resembles the Petty Sessional Court in deciding suits which are too small to take up the time of the superior courts, and which, for the sake of litigants and the public alike, require to be dealt with cheaply and speedily. But it has no jurisdiction (or only in a few cases) corresponding with that which the Petty Sessional Court exercises in preparing the preliminaries of a case for the superior tribunal.

Final, not preliminary.

The **County Court District** is, then, an area of local civil jurisdiction, constituted, under powers conferred by statute, by an Order of the Privy Council, which may rearrange or destroy it altogether. The four hundred and forty-four County Court Districts of England and Wales are grouped into fifty-five *circuits*, each comprising from one to many 'court towns,' according to the area and density of population. The thickly populated Liverpool circuit, with its small area, has but five court towns; the large and sparsely settled Aberystwyth circuit has eighteen.

The judge.

The County Court judge, who is a barrister of at least seven years' standing, appointed by the Lord Chancellor, is the judge of the *circuit*,[1] not of the dis-

[1] Occasionally, *e.g.*, in the Liverpool circuit, there are two concurrent judges, who divide the business between them by arrangement.

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trict, and holds his sittings at one or other of the court towns of his circuit as often as the exigencies of business demand it. He tries cases upon oral evidence, and, generally speaking, without a jury, although in cases where the value involved exceeds £5, either party may, if he pleases, demand a jury, which will consist of eight persons, subject to the right of the judge (in most cases) to refuse it as unsuitable. Only 362 actions, out of over 700,000 disposed of by the County Courts in 1928, were tried with juries.

Importance of the *District.*

But, although the judge has jurisdiction over the circuit,[1] the business arising in a district must, as a rule, be disposed of in that same district. That is to say, the district in which the defendant resides or carries on business, or where the property in dispute is situated, or where the bankrupt or deceased lived, is the district in which proceedings must be taken. The plaintiff cannot choose a particular court town in the circuit because he has a fancy for the air of it. This is the justification for treating the County Court as a local institution, despite the facts that the County Court judge is, as has been said, appointed by the Lord Chancellor, a member of the central government, not by a local authority, and that the law which he administers is the general law of the country.

Registrar.

Besides its judge, each County Court has its own Registrar, High Bailiff, and other officials for conducting its clerical and executive business. The *Registrar* is a solicitor of at least seven years' standing, appointed by the Lord Chancellor (possibly for two or more Courts), and paid by salary in proportion to the extent of the Court's business. In County Courts having very large business, Joint Registrars may be appointed for the same court. As a rule the Registrar may engage in private practice not connected with the Court; but if the Court business is very heavy, the Lord Chancellor may direct that he is not to practise at all. He may

[1] And, if necessary, he may be directed to act in *any* County Court.

be defined as the chief clerical official of the Court. He issues all summonses and orders, keeps an account [1] of the proceedings which take place, receives and accounts for all fees and other monies paid in, and, generally speaking, is responsible for the routine business of the Court.[2] The *High Bailiff* is appointed by the judge, without special approval of the Lord Chancellor; but the latter may, if he think fit, remove him. The High Bailiff is charged with the *execution* of the orders and proceedings of the Court, *e.g.*, he or his assistant delivers the summonses, warrants, and so on to the parties affected, enforces judgment by seizure and sale of goods, and compels the attendance of witnesses. The High Bailiff is now, like the Registrar, paid by salary. For some time past, there has been a tendency to incorporate the office of High Bailiff in that of the Registrar; and it is now expressly provided that no new High Bailiffs, as such, shall be appointed. In fact only some thirteen remain.

High Bailiff.

The jurisdiction of the County Court has been steadily growing during the last forty years, and is now very extensive. It may be most clearly outlined under six heads—

(1) *Common Law jurisdiction—i.e.*, in matters formerly cognisable by the old Courts of King's Bench, Common Pleas, and Exchequer; such as breach of contract, or trespass, assault, or other "tort." Here the Court has jurisdiction to try any personal claim not exceeding in value £100, except cases involving

(a) *Ejectment, i.e.*, recovery of *possession* of land. Here the limit of jurisdiction is £100 annual value or rent of the land in question, which must be within the District. (The claim to

[1] The County Court is, by statute, a 'Court of Record,' *i.e.*, a court whose account of its own proceedings cannot be questioned.

[2] He may even, *on the application of the parties*, and by leave of the judge, decide disputed claims which do not amount to £5.

possession of land of far greater value may be only worth £100.)

(β) *Title* to land or rights in connection with land.[1] Here the limit is £100 annual value or rent; but the property need not be situated in the District. But *with the consent of the parties*, a judge may decide such a question beyond the limit stated. His decision will not, however, be binding on persons not represented in the proceedings.

(γ) Claims for *libel, slander, seduction*, or *breach of promise of marriage*. These claims can only be brought into the County Court by consent.

Remitted cases.

Claims up to the £100 limit may also be 'remitted' by a superior Court for trial in the County Court in certain cases. Thus, in an action brought upon a contract in the High Court to recover a sum not exceeding £100, either party may apply to have the case remitted to a County Court; and the High Court Judge *must*, unless there is good cause to the contrary, grant the request. And in any action of *tort*[2] brought in the High Court, if the defendant will swear that the plaintiff has no apparent means of paying costs, should he be defeated, the High Court may order the plaintiff to give security for costs, or to submit to a transfer of action to a County Court. Moreover, the County Court has a general jurisdiction to try *any* common law cases within its pecuniary limits, if both parties agree to submit to the jurisdiction. On the other hand,

Consent cases.

[1] "Corporeal or incorporeal hereditaments . . . toll, fair, market, or franchise." The words in the text are a sufficiently correct rendering for general purposes. It is doubtful, on the wording of the Act, whether a County Court can try the title to a "toll, fair, market, or franchise" of *any* value, without consent; but it is clear from decisions that at present the view is that it cannot do so.

[2] Civil wrongs fall into two great classes; those which are breaches of agreement entered into between the parties, and those which do not arise directly out of agreements. The latter are called 'torts.'

if a claim on contract exceeding £20, or in tort exceeding £10, is brought in the County Court, the defendant may, if he can persuade the judge that an important question of law or fact is to be tried, and upon giving security, have the proceedings in the County Court stayed, with a view to their being tried by the High Court. The value of the remitting power of the High Court is shown by the fact that, in the year 1928, 1722 cases were compulsorily sent down to the County Court; and it is regrettable that the official statistics no longer show how many of these were actually tried. For if a plaintiff who brings his action in the High Court is not prepared to enforce it by the simpler and cheaper machinery of the County Court, it is probable that his proceedings are not *bonâ fide*.

Removal to superior Court.

(2) *Equity jurisdiction—i.e.*, in certain matters formerly dealt with by the old Court of Chancery, such as the winding up of the estates of deceased persons, the execution of trusts, the enforcement of mortgages, the 'specific performance'[1] of contracts, the rectification and setting aside of contracts, proceedings affecting the conduct of trustees, the administration of the affairs of infants, and the dissolution of partnerships. Many of these matters are not *litigious* at all; the Court acts as genial adviser and supervisor, rather than as judge. And the general rule is, that the County Court judge may in these matters do all that a judge of the Chancery Division might do, provided only that the property in question does not exceed £500. Equity proceedings commenced in the High Court may, as in common law cases, be remitted to a County Court; but the power to remit exists only where the case might originally

[1] The rule of the Common Law is, that if *A* will not perform his contract with *B*, all that *B* can do is to make him pay damages. But *B* may much prefer to have the contract performed 'specifically,' *i.e.*, actually; and, in a few cases, a court of equity will enforce such performance.

have been brought in the County Court. During the year 1928 the County Courts dealt only with a little over 300 equitable cases. Again, apparently, the official figures do not show the property involved.

(3) *Admiralty cases—i.e.*, claims for salvage, towage, necessaries supplied to a ship, seamen's wages, damage by collision at sea, for hire of ship, or carriage of goods. Here the claim if for towage, necessaries, or wages, must not exceed £150; if on any other account, £300—unless, indeed, the parties agree to submit larger claims. Moreover, it is only those County Courts specially appointed by Order in Council which have Admiralty jurisdiction; and no Order in Council can confer upon a County Court any jurisdiction in prize or slave-trade cases. In the year 1928 the County Courts (including the City of London Court) having Admiralty jurisdiction between them entertained proceedings in 431 cases.

(4) *Bankruptcy jurisdiction.*—Here, in ordinary cases, the jurisdiction of the County Court is unlimited in amount; and the County Court has full powers to conduct bankruptcy proceedings. But many County Courts are expressly excluded from bankruptcy jurisdiction by the Bankruptcy Act, 1914; and in the year 1922, apparently only 135 did bankruptcy business, disposing of 4401 cases. The numbers appear to be slightly diminishing. Besides the ordinary cases of bankruptcy, the County Court may exercise the rare power of committing to prison a debtor who refuses to obey the order of the Court for payment of a sum of money. The Court will not take such an extreme step unless satisfied that the debtor really can pay if he chooses; but, nevertheless, in the year 1928, some 116,000 orders of commitment were made, and 3510 debtors appear to have been actually imprisoned under them. An useful branch

Imprisonment of debtors.

of bankruptcy business is the power first conferred upon the County Court by the Bankruptcy Act of 1883, in any case in which judgment has been obtained against a man who alleges that he cannot pay and that his total indebtedness does not amount to £50, to make an order for the administration of his estate. 1713 such orders were made in the year 1928; and comparison with earlier figures seems to show that this branch of jurisdiction is now increasing.

(5) *Testamentary jurisdiction.*—No County Court can grant a Probate, *i.e.*, the official authority to an executor to act, nor can it make an administrator of the estate of a person who has died intestate. *A fortiori*, it cannot collect the 'death duties' of any estates. But where there is any dispute as to the existence or genuineness of a will, or the identity of an executor, or the claim of a person to be administrator, the County Court in whose district the deceased died can decide the question, provided that the gross personalty to which the deceased died entitled in his own right did not exceed £200, and his realty did not exceed £300, and provided that the deceased's abode was in one of certain districts. Moreover, by certain useful provisions of recent statutes, where a man or a widow dies intestate, worth only £100 or less, the County Court officials of the District in which he or she lived may fill up the necessary papers and apply for administration on behalf of any applicant who is the widow or child of the deceased, and who lives more than three miles from the Probate Registry having jurisdiction in the matter. Recent figures, however, appear to shew that little use is made of the County Court testamentary jurisdiction.

(6) *Miscellaneous jurisdiction.*—Finally, by the provisions of a large number of modern statutes, *e.g.*, the Workmen's Compensation Acts, the Friendly

Societies Acts, the Agricultural Holdings Act, the Rent Restriction Acts, the Adoption of Children Act, the Legitimacy Act, and the Guardianship of Infants Acts, jurisdiction in a vast number of special cases is conferred upon the County Court. No generalisations upon the subject can usefully be made; the terms of the jurisdiction can only be learned by reference to the statutes themselves.

Judged by the use made of them, the County Courts have been an unqualified success. In the year 1928, over one million plaints (*i.e.*, initial steps in legal proceedings) were issued by them. Of these an overwhelming majority were for sums under £20. In the year 1923, the total sum recovered for litigants was upwards of £3,500,000, exclusive of cases settled out of court. Unfortunately, more recent statistics do not shew this item. It seems possible, on the face of it, that the cry for the localisation of justice will be met by a further increase in the jurisdiction of the County Courts. The great objection to this course is that, at present, County Court proceedings do not pay a fair working remuneration to solicitors; and they are therefore unpopular with the abler members of that profession. On the other hand, the recent very liberal provisions of the Rules which secure assistance in civil actions in the High Court for poor persons who are unable to bear the cost of litigation, do not apply to County Court proceedings.

Appeals from decisions of the County Courts go, as a rule, to a 'Divisional Court' of the High Court, *i.e.*, to a Court comprising at least two judges of the King's Bench Division; and there is no further appeal without the leave of the Divisional Court. But, in some cases, notably Workmen's Compensation Cases, appeals go direct to the Court of Appeal. From the Court of Appeal, an appeal lies to the House of Lords. But an

appeal from a County Court is only a matter of right in the more important classes of cases. In other cases it can only be brought by leave of the County Court judge.

CHAPTER VI

THE POOR LAW UNION

THE Poor Law Union is on the verge of extinction. Unless any unforeseen event occurs, it will cease to exist in England on 31st March, 1930, in obedience to the provisions of the Local Government Act, 1929. The disappearance of an institution which has played so large a part in English life for nearly a century will, in the main, be due to the conviction which has been growing for many years, that, in spite of the very large amount of honest, able, and devoted work which has been expended (much of it without pecuniary reward) on the administration of Poor Relief, especially since 1834, the system has outgrown its usefulness.

It is difficult, and, perhaps, unsafe, to generalise about the causes of this conviction. But certain fairly obvious causes may be noted.

See p. 16.

In the first place, the original Poor Law scheme of the Elizabethan statesmen tried to reconcile two almost irreconcilable objects, viz., the relief of genuine and undeserved poverty, and the discipline of the idle and vicious. It is obvious that these two objects require different treatment; and the attempt to deal with them by the same system was doomed to failure. The atmosphere of the 'lock-up' penetrated into the wards in which the 'impotent poor' were housed. It was impossible, or all but impossible, that the same officials, usually persons of little education or refinement, should have one attitude for the 'sturdy beggar,' and another for the aged worker whose undeserved poverty brought him to the 'House.' The inevitable consequence was,

that the Poor Law system was, and, it is to be feared, still is, disliked by the very persons whom it was intended to benefit ; and not only by them, but, with increasing intensity, by the more influential members of the community.

This result was a tragedy of the first order. For, as all students of English economic history are aware, the reckless expenditure upon poor relief, systematically adopted towards the end of the eighteenth century, not merely encouraged the grossest abuses, with their inevitable effect on character, but very nearly brought the country to bankruptcy. So terrible was the outlook, that one of the first cares of the historic Reformed Parliament of 1832 was to undertake a thorough investigation into the whole subject ; and the famous Report drawn up by the Commissioners on that occasion is one of the most important documents in English social and economic history, while the ensuing legislation of 1834 laid the foundation of the existing Poor Law. This legislation, and the improved administration which followed from it, have, undoubtedly, done much to remove the worst economic extravagances of the old days ; but recent events have shewn that even the reformed Poor Law system is liable to gross economic perversions. There can be, in fact, very little doubt, that a desire for a more careful oversight of Poor Law expenditure is a second cause of the projected drastic change.

In the third place, a happier cause of discontent with existing methods has, for some time, been at work. This is the increased attention which has been devoted to what is commonly known as 'welfare legislation,' *i.e.*, laws designed to better the material conditions of the poorer classes on modern and scientific lines. Among these may be mentioned the systems of Old Age Pensions, National Insurance against the consequences of illness and unemployment, the prevention of tuberculosis and other diseases, the care of expectant mothers and neglected children, which are rapidly supplanting the

older methods of poor relief, and which, happily, have not acquired that stigma of 'pauperism,' with its accompanying dislike in the minds of just those persons who most deserve to be helped, which has been, as has been said, one of the tragedies of the Poor Law system. This fact is clearly brought out by one of the most striking provisions of the Local Government Act of 1929 (s. 5), which directs the new Poor Law authorities, in framing their administrative schemes, to arrange, so far as possible, that any assistance which might, alternatively, be provided either by way of poor relief, or under the newer systems above alluded to, shall be 'exclusively' provided by the latter and "not by way of poor relief."

In the circumstances, it might, perhaps, be suggested that even a brief description of the Poor Law Union, so soon to be abolished, is unnecessary in this book. There are, however, two objections to this suggestion, which, taken together, turn the scale against it.

One is that, though, by the Local Government Act of 1929, the functions (and, incidentally, the property and liabilities) of the Poor Law Unions are transferred to the councils of the counties and county boroughs, yet those functions, which have grown up historically under the system of Poor Law Unions, are, for the present at any rate, substantially unchanged, and are transferred by mere reference. Thus, if it is desired to know what are, in fact, the details of the Poor Law system, it is necessary to consult, not the new Local Government Act, but the consolidating Poor Law Act of 1927, subject to the amendments inevitably made in it by the transfer of 1930.[1]

The other objection is, that, in a country like England, whose institutions are the result of a long historical development, it is impossible to draw a sharp line between present and past, at any rate the recent past.

[1] Presumably a new consolidated Poor Law Act, embodying the changes made by the legislation of 1929, will have to be drawn up and passed.

For the present is quite unintelligible without some general outline knowledge of what immediately preceded it. Not to speak of Acts of Parliament and law reports, which are consulted mainly by professional and public persons, English literature and journalism of the last century assume the existence of the 'Union' as a well-known fact of social life; and a reader knowing nothing of its nature would find himself at sea.

For these reasons, a brief account of the Poor Law Union, even though moribund, must be attempted. The methods by which its functions are, in the future, to be handled by its successors, will appear at a later stage.

The Poor Law Union, as a normal institution of English Local Government, dates from the Poor Law Amendment Act of 1834. But the cost of maintaining separate machinery for the administration of poor relief in every parish, and the other evils attendant upon a too minute subdivision of authorities, had, even before the legislation of 1834, induced the State to sanction, and even encourage, the union of parishes for purposes of poor law administration. These tentative measures date from the year 1662.

Act of 1834 not compulsory.

Two points should be especially remembered with regard to the scheme of 1834. In the first place it was not compulsory in character. It merely *enabled* parishes to combine together for purposes of poor law administration; and, although the central Government might compel parishes to unite if it appeared obviously better that they should do so, there are, as a matter of fact, a few large parishes which (either with or without special legislative sanction) still administer their own poor relief. This fact has been recognised by recent legislation, which defines a Poor Law Union as "any parish *or* union of parishes for which there is a separate Board of Guardians."

Interpretn Act, 1889.

Nor did it extinguish individuality of parishes.

In the second place, though the great majority of parishes were united for the purpose of poor law *administration*, there were, practically, none united for purposes

of poor law *maintenance*, by the Act of 1834. The cost of poor relief, and the expenses incident to the machinery of administration, are now paid out of the Union's common fund; but this common fund was, until the changes which took place in 1927,[1] (in the absence of special order) collected by the overseers in each parish. The amount which a parish contributed depended entirely upon its rateable value; and the authorities of the Union had, *primâ facie*, nothing to do with the sources from which it came, or the mode in which it was collected. Until 1865, the distinction between the several parishes composing a Union was still stronger; for unless they agreed (which they, practically, never did) to consolidate for all purposes of poor relief, each parish contributed only to the extent of the cost incurred in maintaining *its own* poor, *i.e.*, those paupers who, by virtue of the law of 'settlement,' belonged to its own area, together with a share of the general working expenses of the Union. But the Union Chargeability Act of 1865 abolished this excessive particularity; though it by no means extinguished the individuality of the component parishes of a Union.

See *post*, p. 65.

Poor Law Commissioners.

Poor Law Board.

Local Government Board.

The general supervision of the administration of the poor relief throughout England and Wales was placed by the Act of 1834 in the hands of a body known as the Poor Law Commissioners. This body was superseded in the year 1847 by a new Commission, generally known as the Poor Law Board; and this again, on the formation of the Local Government Board in 1871, gave up its powers to the newly created body, which itself was, in the year 1919, merged in the new Ministry of Health.

The **Poor Law Union** then (of which there appear to be 646 in England and Wales [2]) is an area for the administration of poor relief, being usually a combination of parishes formed either by agreement or by

[1] As to these, see Chapter VII, *post*, pp. 89–93.

[2] Report of Local Government Board, 1904–5. App. F, p. 466.

order of the central government, but occasionally still a single parish. A comparison of figures shews that there is an average of between twenty-two and twenty-three parishes to every Union; but such a result is necessarily fallacious. The actual number of parishes in a Union is purely arbitrary, being settled by such considerations as those of size, density of population, proximity to a convenient centre, and the like. Whether the Union be a single parish or a number of parishes, the poor law authority is always a **Board of Guardians;** and, up to 1894, a Board of Guardians (in the absence of special legislation) consisted of the Justices of the Peace resident in the Union (who were *ex-officio* members) and a number of representative Guardians elected by the owners and ratepayers of the constituent parishes of the Union, upon a cumulative vote ranging from one to six, according to the value of the property for which they were respectively rated. There had to be at least one elective Guardian for each constituent parish containing a population of 300; but smaller parishes might be united for electoral purposes. A property qualification for the elective Guardians (not exceeding a rating value of £40) was fixed by the Local Government Board; and the Guardians sat for one year only, unless the Board, with the consent of a majority of the ratepayers, resolved that it would sit longer. Even under this old system women were (it is said) entitled to act, both as electors and Guardians.

Former system.

But, by the law which first came into force in November, 1894, very great changes were introduced into the constitution of Boards of Guardians. In the first place, there are now no more nominee or *ex-officio* Guardians; and the property qualification for the office has been swept away.

The scheme of 1894. No *ex-officio* Guardians. No property qualification.

No one is now eligible as a Guardian for any parish unless he is either a parochial elector of, or has for twelve months resided in, some parish (not necessarily that for which he is standing) within the Union; or unless, in the case of a candidate for a parish wholly

Parochial electorship. Residence.

within a borough, he is qualified to be a member of the borough council. On the other hand, neither sex nor marriage will disqualify for voting or for election; but, generally speaking, the disqualifications for the office of district councillor apply to that of Guardian [1]; and, in addition, the fact of serving as a paid Poor Law officer *anywhere* is a bar. It is said that acceptance of the office of Guardian is not compulsory.

See *post*, p. 172.

See *post*, p. 62.

Election of Guardians.

Again, all Guardians (with the exception to be hereafter noted) are now elected on an uniform plan by the parochial electors of each parish, or, if the parish is very large, of the wards into which it has been subdivided for purposes of election. In the case of Guardians for a rural parish, the persons who are elected as district councillors, also act as Guardians for their respective parish; and, in an urban parish, the persons who, if the parish were rural, would elect the councillors, elect Guardians to represent them on the Board of the Union of which the parish forms part.[2] Who those persons are we have already seen. As in the case of parish elections, each elector has one vote for each vacancy; and cumulation is not allowed. If there is a contest, the poll will be taken by ballot, and not, as formerly, by voting papers left at the houses of the electors.

Ante, p. 20.

Term of office.

Once more, the term of office of a Guardian is now three years; and, usually, one-third of the Board will retire annually. But, upon the application of the Board, the County Council has power to sanction the simultaneous retirement of all the members.

Additional Guardians.

Finally, by a provision partly intended, doubtless, to soothe the feelings of the ejected *ex-officio* Guardians, a Board of Guardians is allowed to elect its chairman and vice-chairman, and not more than two other

[1] The disqualification for crime is wider than in the case of a district councillor. Any conviction for felony, fraud, or perjury, however long ago, will, apparently, disqualify a candidate for the office of Guardian.

[2] Thus, there is not, in fact, any election of Guardians *as* Guardians in a rural parish; but there is an election of (rural) District Councillors who also act as Guardians.

persons, as 'additional' members of the Board, from outsiders who are qualified to hold the office of Guardian.

Thus much for the constitution of Boards of Guardians, as at present existing. A word now as to their powers and duties.

Poor relief.

The primary object of the existence of Guardians is, of course, the relief of the poor. Now that the very limited power of granting relief in urgent cases left to the overseers by the Act of 1834 has disappeared with the abolition of the office of overseer, all the *distribution* of the thirty-eight millions annually spent in the official relief of the poor is in their hands. Roughly speaking, there are two ways in which a pauper may be relieved; and opinion is very much divided as to their respective merits. Either he may be taken into a workhouse or asylum provided by the authorities, and there housed, clothed, and fed at the expense of the rates; and this either as a casual occurrence, on occasions of temporary necessity, or as a permanent provision. Or, relief may be granted by money, provision of work, or other means, to applicants who live in their own homes. Certainly it may be said that it never was the intention of the law that any but the 'impotent poor,' *i.e.*, those persons who had no reasonable prospect of earning their livings independently, should be permanently isolated from ordinary life, and maintained at the expense of the rates. But 'impotency' is, of course, a relative term; and the extreme difficulty of estimating the genuineness of applicants for outdoor relief inclined the authorities to strain somewhat the interpretation of the term, and to use admission to the workhouse as a test of real *bonâ fide* poverty. Needless to say, the inmate of the 'workhouse' is not entitled to spend his days in idleness; but the low standard of task work, combined with the unwillingness of Poor Law authorities to compete with independent labour, and the growing feeling of industrial organisations against allowing protected goods to be put upon the market, tend to reduce the value of the workhouse output. Notwithstanding,

Indoor relief.

Outdoor relief.

however, the feeling of Guardians in favour of indoor relief, its amount, both actually and relatively to the amount spent in outdoor relief, has shewn a perceptible diminution in the last few years.

Relief must be given.

The extreme importance of the subject of *indoor relief* is that it cannot legally be refused to those who genuinely stand in need of it, and shew the necessary title. This title is technically known as **settlement** within a parish comprised in the Union. The law of settlement, at any rate in its simpler form, dates from the very beginning of the Poor Law itself; but its evil reputation arises from the complications introduced into it during the seventeenth and eighteenth centuries. And there can be small doubt that grave suffering and wrong were inflicted in its name for many generations. So long as a parish administered its own poor relief, so long even as it was responsible for the actual cost of the paupers who claimed 'settlement' in it, the object of the parish authorities was to reduce by every possible means the number of its inhabitants who were at all likely ever to fall into poverty. A certain statute of the year 1662 gave the parish authorities power to apply to two Justices of the Peace for an order to remove from the parish, within forty days after their arrival, all persons likely to become chargeable to the poor rate, unless they inhabited a tenement of the annual value of £10, or gave security to the satisfaction of the Justices. By refusing to build, or allow to be built, any cottages of less annual value than £10 (a safe margin in days when the average yearly wage of a labourer was about the same sum), the landowners of a 'close' parish (*i.e.*, a parish in which all the land belonged to a few large proprietors) could pretty effectually keep down the increase of population; and the zeal of the parish officers would do the rest. Since the abolition of specific parochial liability in 1865, the desire of a parish to rid itself of possible paupers has been less marked; but as the law of settlement still determines the liability of a Union, and will, presumably, determine the liability

Removal statute of 1662.

Ante, p. 60.

of the new Poor-Law units, it is necessary to state it here in bare outline. The grounds upon which settlement in a parish may be claimed are—

(i.) *Birth.*—In the absence of proof of any other settlement, the old rule holds, that a man is legally 'settled' in the parish in which he was born. But if, in the case of a child under the age of sixteen, it be proved that its father, or (if he be dead) its widowed mother, has or had a settlement in another parish, the presumption is shifted to the parish of settlement of the parent in question.[1] A similar rule holds with regard to the settlement of a married woman, who takes that of her husband instead of that of her birth. But, of course, in either of these cases of 'derivative' settlement, the pauper may have acquired a settlement of his or her own by any other title. Derivative settlement.

(ii.) *Ownership of property.*—Towards the end of the seventeenth century, it was decided by the Courts that a man could not be removed under the statute of 1662 from a parish in which he had an estate in land. If, therefore, such a man resided in the parish for forty days (the limit of time allowed by the statute for application for an order of removal), he acquired a legal settlement. And the rule still holds; but the Poor Law Amendment Act of 1834 has provided that a settlement acquired by the purchase of property for a less price than £30, shall last only so long as the claimant resides within ten miles of the parish.[2]

(iii.) *Occupation of a tenement of the yearly value of £10.*—By a similar course of reasoning, a man who came to occupy a tenement of the value of £10 a year could not be removed under the statute

[1] In the case of an illegitimate child the settlement derived is that of the mother.

[2] The wording of the section left it doubtful whether the limit of residence was ten miles from the *parish* or from the *property*. But it has been decided that the view stated in the text is the correct one.

of 1662; and he, therefore, acquired a settlement after forty days. And this rule still holds, modified, however, by the provision of the Poor Law Amendment Act of 1834, which requires one year's payment of poor rates as well as of a rent of £10, in respect of the qualifying tenement.

(iv.) *Apprenticeship* under a duly stamped document, followed by residence for forty days under its provisions in any parish, confers a settlement.

(v.) *Residence.*—Finally, after a voluntary residence in a parish for a period of one year, a person cannot be *removed*; and, after a similar residence for three years, he is to be deemed to be settled in the parish of residence until he has acquired some other settlement. It should be noted, however, that the fact that a person applying for poor relief cannot be *removed* ('status of irremovability') does not, of itself, make his place of residence his parish of settlement, or relieve his place of settlement of the liability to pay the cost of his maintenance. There are several special cases of 'irremovability,' *e.g.*, wives, widows, and children.

There were formerly other means of acquiring a settlement, *e.g.*, by payment of highway rates, hiring and service, service of office, and so forth; but these have all been abolished. The chief difficulty of the law of settlement now appears to be in ascertaining the priority of liabilities. If a man or a single woman applies for relief, and he or she can be proved to have resided in a parish of the Union for a year, there cannot, as a general rule, be any removal. If this cannot be proved, the enquiry must be directed to find the parish in which the applicant last resided for three years. Failing this, settlement by ownership, occupation, or apprenticeship may be proved; the latest being (presumably) the test of liability. If no such settlement can be established, the place of birth is the last resort. Wives, as we have seen, take the settlements of their husbands, and children under sixteen of their father, in the absence

of proof to the contrary. But the Guardians are not allowed to postpone the giving of temporary relief on the ground that the applicant is not settled in the Union. They must give immediate relief in cases of urgency, and then apply for an order of removal, if the applicant is removable.

Outdoor relief.

Outdoor relief may take the form of medical attendance in cases of sickness, payment of funeral expenses, allowance in money or kind to widows, women deserted by their husbands or whose husbands are in the army or navy, payment of expenses of children attending pauper schools, or the provision of work for able-bodied males. The last-named form of relief is rendered almost compulsory by an old-standing Order of the Poor Law Board, which directs that "every able-bodied male person, if relieved out of the workhouse, shall be set to work by the Guardians and be kept employed under their direction and superintendence so long as he continues to receive relief." This Order has been somewhat liberally construed; and, of late years, there has been a growing tendency on the part of the unemployed artisan or labourer to demand the institution of relief works as a right. So long as a Board of Guardians (either in its primary capacity or in its character of rural sanitary authority) could really find useful work, not branded with the stigma of pauperism, for decent men who were in temporary difficulties, they performed a great service to the community. But it may well be questioned whether Boards of Guardians are exactly the authorities best fitted to inaugurate an era of collective production; and the recent schemes which have introduced other methods of dealing with unemployment have diminished the need for treatment by the Poor Law authorities.

Poor rates.

To provide themselves with funds for carrying out their duties the Guardians of a Union were entitled to make such demands upon the overseers of their constituent parishes as might be necessary. They had no power themselves to levy a rate; but they appointed

Ante, p. 60.

an Assessment Committee, which scrutinised the valuation of the rateable properties in their respective parishes drawn up by the overseers. Now that the office of overseer has been abolished, the Guardians send their precepts, or demands, to the new rating authorities, viz., the District Councils, whose own Assessment Committees settle the valuation lists. The proportionate liability of each parish being settled beforehand by the valuation list drawn up by the rating authority, the question is merely one of distributing the amount required at any time in accordance with the rateable value of the constituent parishes as shown by the list. Overseers who failed to comply with an order of the Guardians for payment of money could be proceeded against in a summary way, either by conviction and fine, or by levy against their goods; and a similar power will be exerciseable by the new Poor Law authorities against the rating authorities who fail to respond to their 'precepts,' though, naturally, in a somewhat different way. The Guardians had also a right to proceed summarily against any person through whose neglect or default they were put to expense. Absconding husbands, absent soldiers and sailors, and others who had failed to provide for the maintenance of their relatives, for whom they were liable, could be proceeded against by the Guardians for the recovery of the expenditure incurred in relieving those for whom the defaulters should have made provision. These powers have now also passed to the new Poor Law authorities; but the latter have also express power, under the Local Government Act of 1929, to limit their demands to such expenses as the persons liable are, in the opinion of the authorities, able to pay, in respect of relatives maintained in institutions.[1]

[1] Shortly put, a man is liable to maintain his wife and his wife's children (born before his marriage to her), as well as his own children and grandchildren, and his parents; and an unmarried woman is liable for the maintenance of her children, grandchildren and parents. A married woman having separate property is equally liable with her husband to maintain her children and grandchildren; but her liability is (probably)

Loans.

Moreover, for the performance of works of permanent value, a Board of Guardians was sometimes entitled to raise money by way of loan, repayable by instalments. Such works were workhouses, hospitals, ambulance stations, asylums, schools, and the like; objects whose benefit would obviously last over a long term of years. The security for the repayment of these loans was the prospect of forthcoming poor rates. But no loan could be raised without the sanction of the Ministry of Health; and the total indebtedness of the Guardians must not have exceeded one-fourth of the annual rateable value of the Union, or, in cases specially approved by the Ministry of Health, one-half of such value.

Union staff.

The ministerial duties of a Board of Guardians are performed by a staff of paid officials—medical officers, relieving officers, valuers, masters and matrons of workhouses, collectors, and clerks. These officials are appointed by the Guardians with the consent or by the direction of the Ministry of Health; but they can only be dismissed by the last-named authority. This last provision is necessary in order to secure the independence and safety of the officials. But it rendered it sometimes very difficult for a Board of Guardians to get rid of an incapable servant.

Other functions of a Board of Guardians.

In addition to their primary duties in connection with the administration of poor relief, Guardians of the Poor had or may have had various duties in connection with sanitary matters, highways, and other subjects. But these either have been or will be discussed in connection with the subjects to which they specially relate. The Guardians were also responsible for the elementary education of workhouse children; and this duty they discharged, either by maintaining schools of their own, or by arranging for the children to be sent to schools maintained by a local education authority. It may, however, here be remarked that upon the Guardians

limited to her separate property. Of course the liability only arises if the persons in question are unable to maintain themselves by their own labour.

Vaccination.

falls at present the somewhat invidious task of enforcing the provisions of the Vaccination Acts. The Poor Law Union constitutes *primâ facie* the **vaccination district,** which may, however, be divided if the necessities of the case require it. The vaccination officers are the officers of the Guardians; and at least one paid vaccination officer must be appointed for each Union. Finally, the

Registration of births, deaths, and marriages.

Poor Law Union at present is the district for the registration of births, deaths, and marriages, presided over by a Superintendent Registrar, who is usually the clerk to the Guardians. Each Union is divided into as many sub-districts as the Registrar General may deem necessary; and a Registrar is appointed for each by the Guardians. But both Superintendent Registrar and Registrar may be dismissed by the Registrar General, who is, of course, an official of the central government, having his headquarters in London.

CHAPTER VII

THE SANITARY DISTRICT

IT is no light task to attempt even the barest outline of the vast and complicated scheme of English sanitary administration. Even if we put aside for the present the special peculiarities of Metropolitan management, in themselves almost sufficient for the study of a lifetime, we are bound to face the fact that the legislature has deemed it impossible to state the law on the subject in less bulk than a great codifying statute of 343 clauses, and some forty amending Acts, to say nothing of Orders in Council innumerable. If we add to this reflection the consideration of the fact that the whole scheme has since 1875 been cut across and reshaped by legislation like the Local Government Acts, of 1894 and 1929, we shall realise something of the magnitude of the task before us.

Public Health Act, 1875.

Local Government Acts, 1894, 1929.

But there is one gleam of comfort. The Law of Public Health is statutory, not traditional. Our forefathers were not morbidly anxious about drains, offensive trades, contagious diseases, overcrowding, and the like. Their sanitary efforts rarely extended beyond feeble and spasmodic attempts to provide a system of usable roads, if indeed unsewered roads can be deemed a department of sanitation. It was not until the cholera had more than once wrought havoc in the land, that any decently comprehensive scheme of sanitation was adopted. The Public Health Act of 1848 (brought into existence by the cholera of 1847), which constituted a Board of Public Health with numerous local authorities working under it, is the first great sanitary statute

Health Law is modern and statutory.

Act of 1848.

on the English statute book. It was followed by revised schemes in 1858, 1866, and 1872, till, in the year 1875, the great statute, which is the basis of the present law, came into existence. Consequently, the law upon the subject of sanitation, complex and voluminous as it is, is modern and easily discoverable. It is not necessary to pore over Littleton and Coke to discover the duties of an urban district council. Patience, not antiquarian learning, is the essential qualification for the task.

Act of 1875.

Every square inch of land in England and Wales (with the exception of the metropolitan area) is supposed to lie within the area of a **sanitary district.** All sanitary districts are either *urban* or *rural*, but, by virtue of special provisions of the Public Health Act, a sanitary district of a peculiar kind, known as a *Port* sanitary district, may be constituted by Order in Council; and its administration will be of such a special kind that it will, practically, constitute a third class. Sanitary districts may then be classified as *urban*, *rural*, and *port*.

(1) An *Urban Sanitary District* may at the present time consist of any one of the two following areas, each with its different sanitary authority.

(*a*) A *Municipal Borough*.—We have not yet considered the nature and constitution of a municipal borough; but for present purposes it may be defined as an area subject to the jurisdiction of a town or city council, exercising its functions by virtue of a Crown Charter, and regulated chiefly by the Municipal Corporations Act, 1882, and its numerous amendments. Almost every municipal borough is an urban sanitary district; and the borough council (of the constitution of which we shall have to speak later on) is its sanitary authority. Legally speaking, the borough council acts in the double capacity of municipal council and urban sanitary authority; practically, it is

See *post*, cap. XI.

one body whose powers come from various sources. There are at present some 339 municipal boroughs in England and Wales, other than Metropolitan Boroughs; consequently some 339 sanitary districts and sanitary authorities already provided for. The Local Government Act of 1894 made practically no change in the case of the urban sanitary district which coincided with a borough, except, perhaps, that it has now become more correct to speak of it as an 'urban district' than of 'urban sanitary district,' and that it is now lawful to *describe* a town council, when acting in its sanitary capacity, as an 'urban district council.' But it is not lawful to alter the "style or title of the corporation or council of a borough."

(β) An *Urban District* which is not a municipal borough. Under the County Councils Act, 1888, it is for the county council to decide that a district in a county should cease to be rural and become urban; and it makes an order to that effect, which requires the approval of the Ministry of Health. There appear to be now some 780 non-borough urban districts.

Constitution by the Act of 1894.

Every urban district (not being a borough) has now, by the Act of 1894, an 'urban district council' of elective councillors, who are either parochial electors of some parish within the district, or have *resided* in the district for the whole twelve months preceding their election, or who own land therein. But no property qualification whatever is required; and neither sex nor marriage will disqualify. The same disqualifications which apply to the parish councillor will apply to the district councillor. Urban district councillors are elected by the local government electors of their district, or, if the district is divided into wards, of their ward; and each elector will have one vote and no more for each vacancy. The urban district councillor

No property qualification.

Ante, p. 24.

Election by parochial electors.

Triennial office.

will hold his office for three years; and, generally speaking, the councillors will retire by thirds in each year. But, upon a resolution passed by two-thirds of the members of an urban council present at a meeting, the county council may order that all the district councillors shall go out of office together in every third year. Finally, it must be remembered that the fact of being within an urban district (borough or otherwise) constitutes a parish an 'urban parish,' and, generally speaking, excludes it from those provisions of the Local Government Act, 1894, which relate specially to parishes.

Ante, p. 19.

(2) *A Rural Sanitary District* may at the present time be defined as the area of any Poor Law Union which is wholly outside the boundaries of all urban sanitary districts, or, in the case of a Poor Law Union partly coincident with an urban sanitary district or districts, that part of it which is outside such district or districts. The sanitary authority in a rural sanitary district is (as provided by the Local Government Act, 1894) the 'rural district council.' The conditions under which rural district councillors are elected are precisely identical with those under which the Guardians for rural parishes in any Poor Law Union are elected; and, as has been explained, the offices of Guardian and rural district councillor are, in fact, as regards every rural parish, combined in the same person or persons, the same election being held for both. Where, therefore, a Union consists solely of rural parishes, the Board of Guardians and the rural district council are composed of exactly the same people. Where a Union consists partly of urban and partly of rural parishes, the Guardians elected for the rural parishes form the rural district council for the district composed of those parishes; whereas in the urban parishes the Guardians and the urban district councillors are elected separately. But this very curious and singularly inconvenient

The scheme of 1894.

Ante, p. 62.

arrangement will, with the disappearance of the Poor Law Union under the Local Government Act, 1929, cease to exist; and the rural district (of which there appear to be now about 650 in England and Wales) will be in sole possession of the field.

The constituencies for the election of rural district councillors are parishes, wards of parishes, and united parishes within the district. Power is given to county councils to divide parishes into wards, or to unite them, for the purposes of the election. Where a rural district is situated in more than one county, this power is exercised by a joint committee of the councils of the counties concerned.

Powers of sanitary authorities.

So much for the constitution of ordinary urban and rural sanitary districts and their respective authorities. Reserving the special 'Port' Districts for the end of the chapter, we come now to the powers exercised by sanitary authorities. It would be, of course, out of place to attempt, in a work like the present, anything like a complete statement of the vast powers exercised by local authorities in sanitary matters. All that can be done is to enumerate a few of the more important heads of their jurisdiction, taking first the objects for which local powers exist, and, subsequently, the machinery by which they are exercised. We must be careful to bear in mind that the urban authority has a good many powers which cannot be exercised by a rural authority.[1]

(*a*) *Roads.*—Although the maintenance and improvement of public highways were not among the primary objects of the great Public Health Act of 1875, yet it was inevitable that the urban

[1] But it must be also remembered that the Minister of Health may, by order, confer any urban powers which he chooses on rural authorities generally; and he may confer certain powers on particular rural authorities, where application is made by the county council or (with respect to a particular parish) the parish council.

sanitary district created by it, which, it should be remembered, was, in a large number of cases, also a single parish, should be largely concerned with that subject. For if, by the old common law, any local body (as distinct from individuals) was responsible for the care and upkeep of public highways, it was the parish—*i.e.*, the inhabitants of the parish.

Systematic modern legislation on the subject begins with the Highways Act of 1835, one of the objects of which was to prevent the reckless increase of the burdens already overpowering the purely agricultural areas, by the 'dedication' of highways to public use, and the leaving of them to be kept up by the inhabitants of the parishes through which they passed. This object, the Act of 1835 and later statutes attempted to achieve, by the creation of special 'highway authorities,' which should exercise a watchful supervision over the dedication of new highways, refusing to take over any that were not satisfactorily made, and levying special rates for the purpose of making and maintaining necessary highways. These new 'highway authorities' were, for the most part, framed on parochial lines; and it was, therefore, natural that, on the formation of sanitary districts, which also followed similar lines, the functions of the Highway Boards should be transferred to them. Even before the Local Government Act of 1894 had completed the scheme of sanitary areas, some, at least, of the Boards of Guardians, who had previously acted as rural sanitary authorities, had taken over the powers of Highway Boards; while it had become an established principle, that an urban district council should be responsible for the highways within its area, other than the 'main roads' managed by the county council, under the Local Government Act of 1888.

See p. 137.

This tendency was completed by the Local

Government Act of 1894, which definitely made the district councils, urban and rural, the normal authorities for roads, other than the 'main roads' managed by the county councils and the public footpaths left to the care of the parish councils. And, on the passing of the Local Government Act, 1888, the then existing urban districts (with certain exceptions), had been allowed, if they wished, to retain the maintenance and repair even of existing and future main roads within their areas; the county councils being obliged to contribute annual sums towards their upkeep.

Main roads.

Incidentally, it may be remarked that it is not quite easy to decide exactly what are 'main roads.' Broadly speaking, they consist of two classes; the first being the old 'turnpike roads' built in the eighteenth and nineteenth centuries, as private speculations, by groups of individuals who charged tolls for the use of them, and since 'disturnpiked' (*i.e.*, thrown open to public user without tolls) by various Acts of Parliament, and the second being 'main roads' declared from time to time by the county authorities to be such. But the passing of the Roads Act, 1920, which, in view of the enormous increase of road motor traffic, conferred large powers on the newly created Minister of Transport in the matter of roads, greatly complicated the position; and the Local Government Act of 1929 has made drastic changes in the functions of the sanitary district as a highway authority, which we must now attempt to summarise. It will be necessary to distinguish between urban and rural sanitary districts in this matter.

'Classified roads.'

Urban Districts.—The Local Government Act of 1929 affirms the *primâ facie* position of the county councils as the highway authorities in respect of main roads, existing and future, and further declares them for the future to be also the normal highway authorities for 'classified roads,'

i.e., roads classified by the Minister of Transport in Class I. or Class II., under the powers conferred on him by the Ministry of Transport Act, 1919. These two groups of roads will, in the future, be known as 'county roads'; and, generally speaking, the county council will, with regard to them, have all the powers at present exercised by it with regard to main roads, as well as the responsibility for the maintenance of every bridge in the county, repairable by the inhabitants at large, which carries a county road.

'County roads.'

Claim by large urban council.

But the former power of an urban council to claim the control of main roads within its area is continued, and, indeed, extended to the 'classified roads' *primâ facie* handed over to the county councils; except that such a claim can, in the future, only be made by an urban district council whose population, when the Act takes effect, exceeds 20,000, as estimated for the year 1928. And the liability of the county council to make grants for the maintenance and repair of such roads is continued, and is even extended, subject to certain safeguards, to the improvement of such roads. Moreover, a county council may, on the application, within three months of the 'commencement'[1] of the Act, of the council of any district within its area, delegate to that council its functions with regard to the 'unclassified roads,' or all or any of the classified roads or county bridges, within the area of the district; and, with regard to the 'unclassified roads,' such application must be granted, unless the county council is satisfied that to grant it would be inconsistent with economy and efficiency. There is an appeal from a refusal, in the case of 'unclassified

Delegation.

[1] It appears to be a little uncertain whether 'commencement' here means the passing or the taking effect of the Act. The word is, apparently, not defined in the defining section (134) of the Act. Probably it means the date of the Royal Assent.

roads,' to the Minister of Transport. Any such applications may be renewed at intervals of five years, with a similar right of appeal; but, on the other hand, any district council may relinquish its delegated functions, and the county council may withdraw them, subject, in the latter case, to an appeal by the district council to the Minister of Transport, so far as relates to 'unclassified roads.'

Rural Districts.—As regards rural districts, the changes effected by the Local Government Act of 1929 are much more drastic.

Primâ facie, the functions at present exercised by rural district councils in respect of *any* highways within their respective areas will, on the Act taking effect, pass to their county councils, with trifling exceptions; and it is expressly provided that, on that date, *i.e.*, 1st April, 1930, "rural district councils shall cease to be highway authorities." But the power of making by-laws with respect to the level, width, and construction of new streets [1] is retained by the district council; though it may only be exercised after consultation with its county council, which, if the district council fails to exercise its power within six months after notice, may itself exercise the power. And it will be remembered, that the power of applying to the county council to delegate any part of its highway functions will belong, on the terms above described, to rural, as well as to urban councils. *Ante,* p. 78.

If one might venture to essay the dangerous task of putting into a sentence the effect which the road sections of the Local Government Act, 1929, will have on the district councils, it might be said

[1] The term 'street' has, in law, different meanings, dependent upon the context in which it appears. It is certainly not safe to assume that it refers only to roads more or less continuously bordered by buildings. For example, in the Public Health Acts it has a much wider meaning.

that, *primâ facie*, they leave the urban districts in control only of the 'unclassified roads,' and deprive the rural districts of their highway functions, but leave it open to a county council to delegate any of its highway functions to any district council, on terms which vary with the nature of the highways proposed to be affected.

(β) *Sewers.*—For upwards of four hundred years the English legislature has dealt with the subject of sewers; but we must not therefore suppose that sanitary legislation has had so long a history. Until the close of the eighteenth century, a sewer was simply a ditch or cutting containing nothing worse than fen water; and the various Commissions of Sewers which were from time to time created, were merely concerned with the reclamation or (as it was called) 'inning' of marsh and fen lands, and the maintaining of them against the encroachments of the sea. The cesspool and the midden were almost the only sanitary contrivances; and the notion of the sewer, as of a channel to carry away the impurities of domestic existence, is as modern as the Public Health Acts themselves. But, broadly speaking, one may now lay it down that all sewers and drains [1] within any sanitary district,—except those constructed by private persons or companies for their own profit, irrigation channels made and used for draining land under a special Act of Parliament, and sewers under the control of Commissioners of Sewers,—belong to and are managed by the sanitary authority. The same authority enforces the provision and proper management of privy accommodation in all

[1] A 'drain' appears, for Local Government purposes, to be a pipe or channel used merely to communicate between a single building or block of buildings, and a general receptacle for sewage matter; a 'sewer' includes all channels for the carrying off of refuse except 'drains,' and except pipes under the control of a special road authority. 'Main drain' would therefore appear to be an incorrect expression.

inhabited buildings [1]; and an urban authority (but not, apparently, a rural) is entitled to provide urinals and other accommodation for the use of the public. The sanitary authority may (and if ordered by the Ministry of Health, must), either by its own servants or through contractors, undertake the removal of refuse from houses, and the cleansing of ashpits and privies in its district, and construct proper sewage works for the disposal of such refuse matter. Moreover, the sanitary authority, in making new sewers, may carry them through any land laid out as a street, and even (if necessary) through strictly private land.

Primarily, the sewers under any highway are vested in the sanitary authority; but the changes made by the Local Government Act of 1929 in the maintenance of county roads, before described, will transfer a good many of them, and rights over others, to the county councils. And the county council may supplement the resources of any district within its area, for the purpose of maintaining sewers or sewage disposal works, or of the provision or improvement of a supply of water (presumably for public use).

Every owner or occupier of premises is entitled to drain into the sewers belonging to the sanitary authority of his district, subject to the observance of proper conditions; but there are various statutory regulations to prevent occupiers turning into sewers any matter likely to cause an obstruction, or any chemical refuse, or even hot water, which is likely to create a nuisance. The sanitary authority itself is not permitted to foul a natural stream by allowing the escape into it of sewage matter.

(γ) *Infectious Diseases.*—The Ministry of Health has

[1] Including factories and workshops. But the special provisions of the Factory Acts, with regard to overtime, employment of women and children, and the like, are not enforced by the sanitary authority, but by inspectors directly appointed by the Home Office.

power, by virtue of various statutes, to make regulations for preventing the spread of epidemic, endemic, or infectious disease, and in particular, to order such steps as the speedy interment of dead bodies, the visitation and inspection of houses believed to contain persons suffering from contagious diseases, and the provision of hospitals and other medical attendance for relief purposes. Upon the sanitary authority is cast the duty of enforcing such regulations. But, even in the absence of special regulations applying to its district, a sanitary authority may provide itself with hospitals and medical officers for the reception and treatment of any sickness. Moreover, it may enforce the disinfection of houses and conveyances which have been occupied by persons suffering from infectious disease, and the destruction of infected clothing; and it may provide mortuaries and places for *post mortem* accommodation. It may call upon any Registrar of deaths to supply it with information as to the particulars of any death registered by him. And, by the provisions of recent legislation,[1] now extended to all sanitary authorities, it will have even wider powers of compelling heads of households and medical practitioners to notify its officers of the existence of any cases of infectious disease in their families or practices, of inspecting and controlling dairies suspected to be the source of disease, of ordering the disinfection of houses, bedding, and clothing, and of making temporary provision for the shelter of persons who have been compelled to leave their homes for purposes of disinfection. Under the head of infectious disease, we may also refer to the important powers exercised by the officers of a sanitary authority to inspect and

[1] The Infectious Disease (Notification) Act, 1889, and the Infectious Disease (Prevention) Act, 1890. Made general by statute of 1899.

examine at all reasonable times any meat, vegetables, milk, fruit, flour, and the like, exposed or prepared for sale, and to obtain from a Justice of the Peace an order for the destruction of such of it as shall prove to be unfit for human food. Similar powers exist under the Adulteration Acts in cases in which the articles in question are not necessarily injurious to health, but are so different from their apparent character as to constitute a fraud upon the public.

Food inspection.

Adulteration.

Again, however, we note in this connection a tendency in the new legislation to supplement the efforts of the district councils in the matter of infectious diseases, by the larger resources of the county councils. For the Local Government Act of 1929 definitely imposes upon the latter bodies the duty to survey the provision made for hospital accommodation for infectious diseases within the county, and to prepare, if necessary in consultation with the councils of the county boroughs within their respective areas, schemes for the provision of adequate accommodation. In default, the Minister of Health may himself prepare and enforce such a scheme, or, alternatively, in the case of default by a district council, transfer the functions of the latter to its county council. The important provisions of the Act with regard to Medical Officers of Health will be later mentioned.

County supervision.

(δ) *Water Supply.*—Every rural sanitary authority *must* see that there is a due supply of water to every house within its district, and, if necessary, provide such a supply at the expense of the owner, unless the cost would exceed a sum which, at 5 per cent., would produce twopence a week. An urban sanitary authority *may*, unless there is in existence a public company authorised by Act of Parliament which is able and willing to supply the district at a reasonable cost, provide or contract for the supply of water, and may charge water rents or rates upon

the occupiers of the houses supplied. Moreover, the obligation resting upon a rural authority in the matter of water supply may be imposed also upon any urban authority by the Ministry of Health; and this obligation includes the duty of periodically inspecting the condition of the supply. Any sanitary authority whose water supply is fouled by any person, has the remedies belonging to an ordinary waterworks company under the Waterworks Clauses Acts; and the sanitary authority may enforce the provisions of the Rivers Pollution Prevention Act, and other statutes intended to prohibit the fouling of running water by sewage, rubbish, and other nuisances.[1] Mention has already been made of the new powers conferred on the county councils to give financial assistance to the district councils in the carrying out of these duties.

Rivers Pollution.

(ε) *Housing of the Working Classes.*—A great consolidating statute of the year 1925 has collected together the scattered provisions of the law upon the various subjects included under this head. The general result may be said to be, that the sanitary authority is in general the body entrusted with the execution of the provisions of the statute applicable to its area; but, in the case of rural workers and others in a similar economic position, the additional powers conferred by the Housing (Rural Workers) Act of 1926, are confided to the county councils and the county borough councils. And the powers of urban and rural authorities are not the same.

Insanitary houses.

It is the duty of every sanitary authority to inspect its district periodically with a view to the discovery of houses unfit for human habitation, and, upon such discovery, or upon representation

[1] Concurrent jurisdiction now belongs to the county council by virtue of the Local Government Act, 1888. But the power of the sanitary authority is not taken away.

by their medical officer of health, or by four inhabitant householders, and upon due proof of the facts, to order the house in question to be closed, and ultimately, if the defects are not remedied, to be demolished. Even where a house is not actually insanitary, yet, provided it is of the working-class type, if it is not reasonably fit for human habitation, the sanitary authority may serve notice upon the owner to repair it; and, if he fails to do so within a reasonable time, the authority may do the work and recover the expenditure from him. And, even though a building is not in itself unfit for human habitation, if it prevents due ventilation, or otherwise causes or prevents the removal of a nuisance in other buildings, the sanitary authority may compel the owner to sell to it both the building in question and its site, for purposes of demolition; unless the owner chooses to retain the site, in which case he gets compensation only for the demolished building. In the case of the insanitary house, the owner who executes improvements to the satisfaction of the sanitary authority merely gets a charge upon the property to the extent of his outlay as against other persons interested. Where buildings have been demolished, or are about to be demolished, the sanitary authority may, with the approval of the Ministry of Health, and after enquiry held, enforce a scheme for reconstruction and re-arrangement of the area in question. If a *rural* sanitary authority declines to pull down an unhealthy or obstructive building after due representation, the county council in whose county the district is may order it to do so, and, in the event of further neglect, may itself do the work at the expense of the sanitary authority. But this rule does not extend to the undertaking of a scheme of reconstruction, nor does it, apparently, affect the ordinary *urban* authority.

Obstructive buildings.

Furthermore, any *urban* sanitary authority may,

Unhealthy areas.

if satisfied that any part of its district constitutes an 'unhealthy area,' that is, an area so unhealthy that its defects cannot be remedied otherwise than by a comprehensive scheme of improvement, including rearrangement and reconstruction of streets and houses, adopt a scheme accordingly, and, having given notice of the fact to every owner or occupier affected, and advertised the existence of the scheme, may apply to the Ministry of Health for an Order confirming the same. The Minister, if satisfied that the preliminaries have been duly complied with, may hold an enquiry, and, being satisfied of the soundness of the scheme, may make an Order accordingly, which, having the force of an Act of Parliament, will be carried out by the sanitary authority.

Working-class houses.

Finally, any sanitary authority which adopts Part III. of the Housing of the Working Classes Act, may buy or build 'houses for the working-classes.' The term in this part of the Act includes tenement dwellings, and even separate cottages with gardens. The sanitary authority may manage these itself, according to regulations made under the general conditions affecting local sanitary legislation. An amending Act of 1900 enabled it to acquire and develop land for such purposes outside its own area; and this provision is incorporated into the consolidating Act of 1925. The former Act repealed a section which impeded the adoption of Part III. by rural authorities, and substituted a simpler procedure, whereby the rural district council can adopt, if the county council consents; and, in default of the rural district council's action, the county council (on a resolution of the parish council of any parish affected) can act itself. The Housing Act of 1919, in effect, required every local authority entitled to put in force the provisions of Part III. of the Act of 1890 to prepare a scheme to do so at once, and, on approval by the Ministry

Post, p. 94.

being given, to carry it into effect. But, as has been mentioned, the still more recent Act of 1926 virtually entrusted the introduction of reconstruction schemes for the benefit of agricultural workers, and others in a similar economic condition, to the county and county borough councils. Since the war, there has, in fact, been hardly a session of Parliament in which a new housing-scheme has not been introduced; and it is impossible to give details of a situation which changes from year to year. As is well known, the cost of the various schemes for the provision and improvement of working-class dwellings does not fall entirely on local resources, but is supplemented largely by Exchequer grants made under the authority of Parliament.

(ζ) *Town-planning.*—A modern and highly ambitious extension of public efforts to improve housing conditions, not confined to the poorer classes, was inaugurated by the Housing and Town Planning Act of 1909, which has twice been amended, and is now contained in the Town Planning Act of 1925. Speaking very generally, the object of the Act is to prevent the haphazard development of building areas by competitive and unrelated action, and to formulate local schemes whereby an area threatened by such haphazard action shall be developed on a considered plan, with a view to preserving its amenities. Again the carrying out of this policy was at first confided to the district councils. But the Local Government Act of 1929 empowers the county council to co-operate with the sanitary authorities in the preparation or adoption of a town-planning scheme; and it enables such a scheme to provide, that the enforcement of its restrictions shall be left to the county council. Further, the Act authorises any district council to agree with its county council for the relinquishment to the latter of any of its functions under the Town Planning Act. But, subject to these changes, the district council is still

the town-planning authority; and, indeed, certain *urban* district councils are required, under a time limit (extended by the recent Act), to prepare town-planning schemes.

(η) *Education.*—Excepting the councils of rural districts, of municipal boroughs with less than 10,000 population, and of other urban districts with less than 20,000, every sanitary authority is an education authority for its district. The subject of education, however, must be considered in detail in a later chapter.

(θ) *Recreation and general public convenience.*—Under this somewhat elastic description we may class a miscellaneous group of powers, exerciseable, generally speaking, only by an *urban* sanitary authority, which aims at providing something more than the bare necessaries of civic life. For example, an urban sanitary authority may acquire, either by purchase, gift, or hire, public walks and pleasure grounds, and may even contribute to the expense of maintaining such places though they belong to private individuals. It may fix up clocks in conspicuous places, plant trees in public roads, provide boats to be used in a place of public recreation, and erect baths and wash-houses for public use.[1] The statues and monuments in any street or public place within its district are under its control; and it may authorise the erection of new ones. It shares to some extent with the Justices the duty of protecting the public against danger from defects in places of public entertainment. It may (under certain conditions) provide and manage public markets. Under the tentative scheme introduced by the Unemployed Workmen Act of 1905, the urban district council of a district with a population of 50,000 had a 'distress committee.' But the Unemployed

[1] In rural districts the power to provide public baths and wash-houses may be acquired by the parish council.

Workmen Act has been superseded by other measures, and will stand repealed as from the coming into operation of the Local Government Act, 1929.

(ι) *Rating.*—Although, long before the great changes effected in 1925, the *urban* sanitary authority had exercised the power, at that time very rare, of levying a direct rate on the occupiers within its area, for its own purposes, instead of issuing 'precepts' to the overseers of the parishes within that area, yet the *rural* authority had, except in a few cases, no such power, but had to follow the old plan of drawing on its constituent parishes, by precepts to the overseers.

This system is entirely changed by the Rating and Valuation Act of 1925, which makes the district councils not merely rating authorities for their own purposes, but, substantially speaking, 'the' rating authorities for all purposes of local government throughout the country. Thus rating becomes, not merely an incidental, but a primary function of all boroughs (including county boroughs), other urban districts, and all rural districts in the country. The old individual and independent character of the parish as a rating unit disappears, except for the facts that, in *rural* districts, the parish council, or (if there is none) the parish meeting, is entitled to appoint two persons, being 'local government electors,' to represent it on the rating authority, and any committee appointed by that authority, in any matter affecting the valuation of property within the parish in question, and that, in the valuation list, the particulars of each parish are set out in a separate division. The overseers as such, as has been more than once mentioned, disappear for all purposes.

See *ante*, p. 20.

It is, of course, impossible, in a work like the present, to examine in any detail the very technical machinery created by the Rating and Valuation

Act, 1925, for the making and levying of rates. Such a subject can only be handled by experts in the strictest sense of the word. Here only the barest outline of the process, in the simplest terms, can be attempted.

A necessary preliminary to the making of any rate is the preparation of a **valuation list,** containing particulars of all the hereditaments (*i.e.*, interests in land) within the 'assessment area,' and the names of the occupiers (or, in some cases, owners) who are *primâ facie* liable for the rates thereof, even if, in fact, they are exempted, wholly or partially, under the provisions of the 'apportionment' scheme of 1928, popularly known as 'derating.' This valuation list is drawn up by the officials of the rating authority for the **assessment area,** *i.e.*, county boroughs and such other areas as may be prescribed by the county council, and approved by the Minister of Health.

For each assessment area there is an **assessment committee.** In a county borough, this will consist of members of the borough council, and, not less than one-third, of outsiders appointed by it; in any other assessment area, of persons appointed by the rating authorities and the county council. Such persons may not be officials of the appointing authorities, nor members of any committee appointed by them to prepare the valuation list of their area.

The first step in the making of a rate is, then, the preparation of the valuation list, which, as suggested, is the work of the rating authority, probably done through a special committee. The actual preparation of the draft list is drawn up by the rating authorities' officials, from 'returns' supplied by occupiers (or, in some cases, owners) of the 'hereditaments' within the area. As has been previously pointed out, the person primarily liable to pay the rates on any property is the occupier, *i.e.*, the person having possession or control of it. Such person

Ante, p. 20.

may, of course, be also the owner; but, equally of course, in a very large number of cases, he is not. In certain cases, however, though the owner is not in occupation, he may, either at the discretion of the rating authority, or by agreement between the parties, be either actually entered in the list as the ratepayer, or he may collect the rate from the actual occupiers with their rent, and account for it to the rating authority's collector. Generally speaking, however, such arrangements can only be made in the case of small properties (not exceeding £13 rateable value); and the owners may be given an allowance or commission, not exceeding ten *per cent.*, or, during the first few years of the scheme, fifteen *per cent.*, on the amount collected.

'De-rating.'

It is impossible here to go into the principles on which the 'gross,' 'net annual,' and 'rateable' values of each hereditament are ascertained for the purposes of the valuation list. These principles are, in the main, set out in sections 22–24 of the Rating and Valuation Act, 1925, and the relevant Schedules of the Act, as slightly amended in 1928. But, in view of the fundamental questions of policy implied in the 'apportionment' measure of 1928, and the interest which they have aroused, it is almost equally impossible to avoid alluding to the fact that the latter Act requires that each valuation list shall distinguish from all other hereditaments mentioned in it, the three classes of (i) agricultural, (ii) industrial, and (iii) freight-transport hereditaments, or that this significant direction was followed, in the Local Government Act of 1929, by the provisions remitting to the occupiers of agricultural land or buildings the whole, and to the occupiers of the other two named classes of hereditaments, three-quarters, of the rates which they would normally have to pay. Of course, in respect of agricultural land and buildings, this provision is only the culmination of a policy long put in force by various

Agricultural Rates Acts; but, in the cases of industrial and freight-transport hereditaments, the policy is as new as it is startling. In this place it need merely be said, that the deficiency in the rate fund caused by the above 'de-rating' provisions, will not fall on the other ratepayers, but will be met by General Exchequer Contributions, in manner to be hereafter explained.

See *post*, p. 147.

The draft valuation list, having been prepared, is then transmitted to the assessment committee and deposited for inspection, in order that any person whose name appears therein may object on any ground to the correctness or fairness of the list, whereby he is aggrieved; and individual notices must be sent by the rating authority to any occupier whose valuation is raised by a new list. Objections are heard by the assessment committee; and, after any necessary revisions, the list is finally approved by that committee, and becomes, *primâ facie*, the list for the next quinquennial period. But any objector whose objection has been overruled may appeal to Quarter Sessions, which, in the case of a county Quarter Sessions, will act through a specially appointed committee for hearing such appeals, and, in the case of a borough Quarter Sessions, by its usual judge, the Recorder. The assessment committee must, if the appeal succeeds, amend the list in accordance with the decision of Quarter Sessions. And, on the 'proposal' of any person (including the rating authority itself), the current list may be specially amended during the quinquennial period, subject to a similar right of appeal, in order to keep it up to date. Subject to these contingencies, the valuation list is in force for five years.

Upon the current valuation list, the rating authority makes and levies a rate, *i.e.*, a local tax amounting to a uniform proportion of the rateable value of each hereditament in the list (subject to the 'reliefs' above described) which will produce

a sufficient sum to satisfy, during a fixed period (usually six months), not only its own requirements, but those of the authorities entitled to issue 'precepts' to it—*i.e.*, generally speaking, the county and parish councils. In the case of urban authorities, this is a 'general' rate only—*i.e.*, a rate equally applicable to its whole area; but, in the case of a rural authority, there may, and probably will be, not only a general rate, but, a 'special' rate leviable only on one or more of its constituent parishes in respect of charges under 'adoptive Acts' in force in such parishes. The rate takes effect without any allowance by the Justices of the Peace; but the fact of making the rate must be duly published. There is a possible appeal to Quarter Sessions against the making of a rate, on the ground of irregularity; but it is expressly laid down, that nothing shall be the subject of an appeal against a rate, which might have been the subject of an objection to the valuation list, in manner previously described.

Ante, p. 30.

'Demands' for payment of the rate when made are, in due course, served by the officials of the authority on the persons liable; and the rates are collected by them. But there may be a discount not exceeding $2\frac{1}{2}$ *per cent.* allowed to occupiers (not owners as such) for punctual payment; and a rating authority may reduce or remit a rate on account of the poverty of the person liable. Moreover, the Justices before whom proceedings to enforce payment of a rate are taken may refuse to issue a distress warrant, if the person liable proves that his failure to pay is due to circumstances beyond his control. These latter provisions apparently apply only to 'general' rates.

The gravity of the task imposed upon the new rating authorities by the Act of 1925 may be estimated from the fact that, in the year 1926, the last year for which the accounts have been closed,

the amount received by the local authorities from rates amounted to upwards of £148,000,000.

Finally, all sanitary authorities took over in 1894 the powers previously exercised by the Justices of the Peace *out of session* in respect to the licensing of gangmasters, dealers in game, passage brokers, and emigrant runners, and the granting of pawnbrokers' certificates, the abolition and alteration of the days for holding fairs, and the execution of the Acts relating to petroleum and infant life protection.[1] They also acquired the powers of Quarter Sessions with respect to the licensing of knackers' yards. And by an important and widely used section of the Act of 1894, the Ministry of Health had the power, on the application of any *urban* council outside the Metropolis, to confer on that council, or any other representative body within the district, any of the powers, duties, and liabilities of a parish council. But, with the great changes in the system of rating, recently introduced, this power has now become of less importance.

Power to confer rural powers on urban parishes.

We have now spoken of the objects for which sanitary authorities exist. It remains to say a few words of the machinery by which they seek to accomplish these objects. This machinery may be considered under the three heads of legislation, officials, and finance.

Legislation.—A sanitary authority has a general power (within defined limits) of enacting local legislation for the purpose of enabling it to fulfil the objects of its existence. Such legislation may take the name of *by-laws* or of *regulations*, according to its nature; and although the differences between these two methods of local legislation are not great, they have some distinctive characteristics of their own.

(*a*) *By-laws* may perhaps be defined as the normal type of local sanitary legislation, the form adopted by

[1] It is difficult to say shortly what was done by magistrates in and out of session respectively in regard to these matters. Perhaps it may be accepted that, as a rule, the grant of a licence was made in session, but that revocation or endorsement could be ordered by magistrates out of session.

the authority which is acting upon its general powers. By-laws are, practically, the statutes or general rules laid down by a local authority [1] for the guidance of its subjects, just as Acts of Parliament are the great means by which the central authority controls the conduct of its subjects. No by-law must, of course, conflict with "the laws of England," *i.e.*, with the law recognised by the courts of the central authority; and this rather elastic rule practically gives the central authority a fairly tight grip upon the vagaries of local legislation.[2] And, particularly, the sanitary by-law must, both in letter and spirit, conform to the provisions of the great statute from which the bulk of sanitary powers are derived, the Public Health Act of 1875. But beyond this, the latitude allowed to sanitary authorities is, in theory, considerable. Only, every sanitary by-law requires confirmation by the central government, generally by the Ministry of Health, occasionally by the Board of Trade [3]; and public notice of intention to apply for such confirmation must be given. Moreover, every by-law must, so far as possible, when made, be brought to the notice of the public. In particular, every by-law of a sanitary authority must be printed and hung up in its office, and a copy given to every ratepayer who applies for it; while every *rural* sanitary authority must send copies of its by-laws to the clerks of the councils or the chairmen of the parish meetings of its constituent parishes, to be deposited among the parish records. Moreover, all by-laws must be authenticated by the common seal of the

[1] It is said that the term by-law is derived from the Danish word *by* (township or hamlet), so often found as the termination of place-names (Whitby, Ferriby, &c.). The by-law, if this derivation be correct, is the law of the *by* or town.

[2] The central courts have long established their right to quash a by-law for 'unreasonableness.' Consequently, a litigant must always be prepared to defend the validity of a by-law upon which he relies.

[3] *e.g.*, in the matter of telegraph wires.

authority which makes them [1]; and no sanitary by-law can impose a penalty of more than £5 for a single offence, or, in the case of continuing offences, a further penalty of 40s. for each day during which the offence is continued.

(β) *Regulations* may be defined as being special rules made by a sanitary authority by virtue of particular powers conferred upon it, and applicable only to a limited area or class of people within its jurisdiction. Thus, when a new street is being built, an urban sanitary authority may prescribe the line of frontage to be followed by those who build houses in the street; any sanitary authority may make regulations for the use of its own *post-mortem* rooms, or for the performance of their duties by its own officials. Such regulations do not primarily affect the general public, and do not (as a rule[2]) require the sanction of the Ministry of Health, nor the official publication demanded of a by-law.

Officials.—There are some officials whom every sanitary authority must appoint, others whom an urban authority must appoint, but whom a rural authority need not, and others whose employment is optional with either class of authority. The chief officials of a sanitary authority are—

(i.) *The Chairman.*—The rules as to the election of chairman, both in urban and rural sanitary authorities, were in the main untouched by the Local Government Act, 1894. And as, according to the previous law, the chairman of a Local Board was elected annually under the provisions of the Public Health Acts, and the chairman of the Guardians for a similar period by virtue of the Order of the late Poor Law Commissioners, it followed that the

[1] But a copy of such by-laws, certified by the clerk to the authority, is evidence in all legal proceedings until its genuineness is disproved.

[2] But regulations compelling the removal to a particular hospital of foreign patients arriving in the district by water, require the approval of the Ministry of Health.

chairman of the ordinary urban or rural district council was similarly elected. The Local Government Act of 1894 indeed expressly provided that neither sex nor marriage should disqualify for election ; and it therefore first enabled us to have chairwomen of district councils as well as chairmen. And whereas every chairman of a district council is an *ex officio* Justice of the Peace for the county within which his district is situated, a chairwoman now enjoys the same privilege. The mayor of a borough is of course *ex officio* the chairman for all purposes of the borough council ; and we must remember that a *rural* council may elect its chairman from outside its own body. Every urban council (not being a borough council) and every rural council may appoint a vice-chairman ; and in the case of the rural council, the vice-chairman may also be imported from outside.

(ii.) *The Medical Officer of Health*, who is an essential official of every sanitary authority, though he need not be specially appointed by the authority if he is already acting in the district for some other body. He must be a legally qualified medical practitioner, and his special qualifications are now prescribed by statute ; while the Ministry of Health may to some extent define the manner in which his duties are to be discharged. Furthermore, by an important provision of the Local Government Act of 1929, a duty is imposed upon every county council to formulate arrangements by which, in the future, every Medical Officer of Health for a sanitary authority in its area shall be a whole-time official, or, to be strictly correct, shall not engage in private practice as a medical practitioner. Apparently, this object is intended, normally, to be secured by a ' combination of districts,' presumably only for this particular purpose.

(iii.) *The Inspector of Nuisances*, likewise, is essential both to the urban and the rural authority. But

the functions of medical officer and inspector of nuisances may be combined in one person.

(iv.) *The Surveyor*, whose appointment is only incumbent on the urban authority; and even here the same person may unite the offices of surveyor and inspector of nuisances.

(v.) *The Clerk*, who is at present specially appointed only by an urban sanitary authority which is not also a borough council. In the case of the rural authority the person who acts as clerk to the Guardians at present acts also as clerk to the sanitary authority, and may receive an extra allowance on that account. In the future, the council will appoint its own clerk. In the case of the borough, the Town Clerk is clerk of the council for all purposes.

(vi.) *The Treasurer*, who, similarly, at present is specially appointed only for the non-borough urban sanitary district; the treasurer of the Guardians, as in the case of the clerk, acting in a double capacity, for the Poor Law Union and the rural district. It is, however, specially provided that no one individual may in any way, wholly or partially, combine the duties of clerk and treasurer of a sanitary authority; and, after the Local Government Act of 1929 takes effect, the rural district council will have to appoint its own treasurer.

Other sanitary officials.

But, beyond these officers, every sanitary authority has power to employ such officials, expert or clerical, as shall be necessary in its particular circumstances; and, as a consequence of the recent increase in their rating functions, the district councils have taken over a large number of the collectors, valuers, and other officials of the old assessment committees of the Poor Law Unions.

Must not be interested in contracts.

Must give security.

To all sanitary officials certain rules apply. No official may directly or indirectly be concerned in any contract made with his council. Every official entrusted with money must give security for his honesty, and must account, whenever called upon, for all moneys received

by him. Any official failing in his duty in this respect is liable to severe punishment on summary conviction, in addition to his ordinary civil liabilities. One feature of special importance in the position of the sanitary official is, that he may be (and generally is) entrusted with the personal duty of enforcing, as representative of his authority, the various provisions of the law upon the subject of sanitation. Inasmuch as there is now an express statutory duty upon every local authority to exercise the powers conferred upon it in such a manner as to secure the proper sanitary condition of all premises within its district, the duties of the sanitary official have lately become increasingly onerous. Unless the law otherwise specially provides, all sanitary offences can be prosecuted only within six months of their commission ; and the tribunal which enforces the complaints of sanitary officials is a court of summary jurisdiction, consisting of at least two Justices of the Peace sitting in Petty Sessions, or of a stipendiary magistrate. There is, however, an appeal to Quarter Sessions, which may, if it thinks fit, state a case for the opinion of a superior court. A sweeping protection, of a kind very rare in English law, exempts the members of a sanitary authority and their officials from personal liability for acts *bonâ fide* done in the execution of their public duties and with the sanction of their respective authorities ; and all proceedings against a sanitary authority, its members, or officials, must be commenced within six months of the happening of the act or default complained of, while due opportunity must be given for the tender of amends.[1]

And must account.

Executive duties.

Prosecution of sanitary offences.

Ante, p. 43.

Protection to members of sanitary authorities.

Finance.—The subject of sanitary finance is complicated by the differences between the constitution of the urban and the rural sanitary district. For, whilst the urban district is as a rule a single or consolidated area, the rural district is a composition of more or less dis-

[1] The rule as to time of commencing proceedings and allowing tender of amends has been extended to all public authorities acting in the discharge of their statutory powers and duties, by the Public Authorities Protection Act, 1893.

connected units, whose separate individuality, especially in the matter of finance, has always to be reckoned with. Nevertheless it is possible, with care, to treat the subject of sanitary finance as a whole. The income (using the word in its largest sense) which a sanitary authority may possibly receive is derived from five sources—

Income of sanitary authority.

(i.) *Property.*—Rents of land and houses, market and bridge tolls, harbour dues, water and gas rents, may be regarded either in the light of income from investments or as cash equivalents for work and labour done. It is but rarely, of course, that any sanitary authority except a borough council owns invested property to a large extent. But, under the new rating scheme, any property formerly vested in the assessment committee of a Board of Guardians (as distinct from the general property of the Poor Law Union) will pass to the corresponding assessment committee of the district council; while, on the other hand, the highway property of the district councils, so far as it relates to the new 'county roads' created by the Local Government Act of 1929, will pass to the county councils. A sanitary authority may be allowed by the Ministry of Health to retain permanently any land which it has been obliged to acquire for sanitary purposes; even though it may no longer be actually needed for such objects.

(ii.) *Subsidies.*—Until the institution of county councils, it had long been the practice for the central government to assist local authorities by direct subventions towards the maintenance of roads, lunatic asylums, sanitary officials, teachers in poor law schools, registrars of births and deaths; and the practice, though there are objections to be urged against it, is likely to continue to a much greater extent. One of its merits is, that it enables the central government to maintain the standard of local administration by laying down requirements of efficiency as the condition of its grants. At present,

however, the subventions to the district councils do not come directly from the Treasury, but through the county councils, to which the Local Taxation Grant is now payable by virtue of the provisions of the Local Government Act of 1888. But, after the new Local Government Act takes effect, the Local Taxation Account will be wound up; and a totally different system of General Exchequer Contributions, on a greatly enlarged scale, will take its place. Although, as before, the bulk of these subventions will be paid to the county councils, substantial portions of them will be allocated to the district councils, under rules, far too complicated to be set out here, based upon the estimated population of the district in question.[1] These General Exchequer Contributions will be referred to in due course.

See *post*, p. 147.

(iii.) *Penalties.*—The penalties inflicted by courts of summary jurisdiction for ordinary sanitary offences, as well as those larger sums which in the case of certain graver offences are directly recoverable as debts by the sanitary authorities,[2] are, after payment of the informer's share where a private person brings the matter to light, payable into the general funds of the sanitary authority.

(iv.) *Loans.*—Where a sanitary authority deems it necessary to undertake works of permanent utility, for the expense of which its ordinary income is insufficient, or which it is obvious ought in fairness to be at least partly paid for by future ratepayers, it may, but always with the sanction of the Ministry of Health, borrow, either from private individuals by the issue of debenture stock or certificates, or

[1] These rules will be found in Sched. IV, Part IV, of the Local Government Act, 1929.

[2] *e.g.*, if any person deliberately fouls any public water with gas washings, he incurs a penalty of £200 for the first offence, and £20 a day during its continuance; and these penalties may be directly recovered in any of the superior courts by the sanitary authority or the person primarily injured.

from the Public Works Loan Commissioners, under the provisions of the Local Loans Acts, such sums as may be necessary to effect the desired improvements. The money so borrowed will be repayable by instalments at dates agreed upon (with the sanction of the Ministry of Health) between the sanitary authority and its creditors, and are, in the meantime, a charge upon the rates. No loan may extend over a longer period than sixty years; but the existing limit of the borrowing powers of a sanitary authority to two years' rateable value of its district, and the necessity of holding a public enquiry before exceeding one year's value, will disappear with the coming into effect of the Local Government Act, 1929. A sanitary authority may, however, mortgage its sewage land or plant in much the same way as an ordinary owner of property; and, up to three-fourths of the cost of such works, the money borrowed upon them will not be counted in reckoning the unsecured debt of the authority. The extent to which sanitary authorities have availed themselves of their borrowing powers may be gathered from the fact that, at the close of the financial year 1914–15, their total outstanding indebtedness exceeded three hundred millions sterling, which sum did not include the debts of metropolitan sanitary authorities.[1]

(v.) *Rates.*—Finally, any sums required by a sanitary authority, after all its other sources of income have been exhausted, must inevitably be obtained from the ratepayers of its district. Previously to the great changes effected by the Rating Act of 1925, the methods by which district councils raised such part of their revenue as was derived from rates differed greatly, principally according to whether they were urban or rural authorities; for they were at that time only concerned with raising money for their own purposes. Now, as we have seen,

[1] Summary of Local Taxation Returns, 1919, pp. 64, 65.

they are the general rating authorities for the country; and, substantially speaking, they work under an uniform scheme. Inasmuch as this scheme has been already explained at some length, it is unnecessary to repeat it here, in dealing with such part of the funds raised by their rating powers as is required for their own purposes. This will, of course, be raised in the same way as the general rate of which it will form part; though the district council will, naturally, not have to issue a 'precept' to itself as a rating authority, to recover its expenses as a sanitary authority.

See *ante*, p. 89.

Finally, it may be observed that the accounts of every urban sanitary authority, not being a borough council, and of every rural authority, are audited annually by an officer of the Ministry of Health.

The Port Sanitary District.

Although for the purposes of the Public Health Act with respect to nuisances, infectious diseases, and hospitals, any ship lying in waters within the district of an ordinary sanitary authority is deemed to be within the jurisdiction of that authority, yet the peculiarities of port towns frequently require a special method of treatment, more particularly where, as is usually the case with river ports, the town is subject to two distinct sanitary jurisdictions. In order to obtain this special treatment, the Ministry of Health may provisionally,[1] or even (if there is no opposition) finally, order that the area of any port recognised as such by the Customs Acts shall constitute a separate *Port Sanitary District*, to be governed in manner provided by the Order. But in selecting its port sanitary authority, the Ministry of Health must choose either an existing sanitary authority whose district abuts on the port, or must make a port sanitary authority by a combination of two or more such riparian authorities. The port sanitary authority thus created may exercise within its district such of the

[1] A provisional Order requires confirmation by Parliament.

powers of the Public Health Act as are assigned to it by the Order of constitution ; but no port sanitary authority can, in that capacity, directly raise any revenue. If it is already a sanitary authority, it can raise within its own area such parts of its expenses as are fairly chargeable to it in respect of its duties as a port authority ; but, for the shares of the other parts of the port area, it must resort to the sanitary authorities within whose districts those parts happen to lie, and such authorities must respond to the claim. If they do not, the amounts claimed can be recovered from them as debts. The Port of London is under the control of a special "Authority," created in 1908, and now regulated by a private Act of Parliament of the year 1920.

GROUP C

THE COUNTY

9. & 10. THE PARLIAMENTARY, JUDICIAL, AND MILITARY COUNTY . . CHAPTER VIII.

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CHAPTER VIII

THE SHIRE OR COUNTY—PARLIAMENTARY, MILITARY, AND JUDICIAL

County and shire.

THE terms 'county' and 'shire,' though now almost synonymous, have not by any means the same history. 'Shire' (*scir*) appears to be an Anglo-Saxon (or at least Teutonic) word, originally used to signify any district or jurisdiction under the control of a special or distinctive authority, possibly with a notion of subdivision from a larger unit. Thus a bishop's diocese is called his 'scir'; the hundreds of Cornwall were at one time known as 'shires'; at the time of Domesday there were seven 'shires,' that of the archbishop and six others, within the city of York. Distinct traces of this vague use of the term survive in the purely nominal shires of the present day—Hexhamshire, Hallamshire, Richmondshire, Allertonshire.

Gradually, however, the word 'shire' became peculiarly appropriated to the district ruled by an earl or ealdorman, or, as he was called by the Latin-writing chroniclers and clerks, the *comes* or count; and, before the Norman Conquest, the existing English counties had for the most part made their appearance. The actual origins of these differ considerably; one thing only we may assert with tolerable confidence, that their boundaries were not fixed arbitrarily, in the way that a modern colony is mapped out, nor even by natural geographical features, though these may have been remotely connected with their original formation. Thus, some of our existing counties (Sussex and Essex, for example) represent heptarchic kingdoms, kingdoms of the south and

east Saxons. Dorsetshire, Wiltshire, and Somersetshire are probably ancient tribal settlements, which once had an independent or semi-independent existence. Yorkshire and Cheshire stand for the territories governed from great Roman cities, and show the difference between the Roman and the Teutonic methods of colonisation. Durham is the patrimony of the great Cathedral of St. Cuthbert, and long maintained its peculiar individuality.

Royal character of the county.

Even before the Norman Conquest, too, the county had acquired a peculiarly *royal* character. No doubt the shire moot or county court was, to a certain extent, a popular institution ; no doubt the historic background of the shire tended to keep alive strong feelings of independence. But the earl or count, though probably designated by local popularity or claims of blood, was formally appointed by the Witan of the kingdom, in which the royal influence was great ; and the sheriff (*shire-reeve*), whose growing importance is one of the special features of late Anglo-Saxon history, was a purely royal official.

Norman policy.

The Norman policy added powerfully to the existing tendency. The great idea of the greatest Norman kings —the Conqueror, his son Henry, and (so far as he can be called a Norman) Henry II.—was to make the county court the chief engine for bringing the native population into conscious touch with the royal government. To the great ecclesiastics and landowners licence of exemption from attendance at other local gatherings was freely granted ; but from the half-yearly county court, where the sheriff proclaimed the King's dues, and the royal judges administered the King's justice, no one was allowed to absent himself. The great landowners and ecclesiastics came in person ; the villagers were represented by their reeve and four men. Edward I., the great organiser of English political life, did but strengthen still further the tendency when he added to the duties of the county court the election of knights of the shire to serve in the newly-created

The Plantagenets.

Parliament. His grandson, when he brought into existence his Justices of the Peace, added yet another storey to the edifice of royal county administration; and the Tudor monarchs, who built up a new county aristocracy on the ruins of the plundered church, to replace the old feudal families which had gone to pieces in the Wars of the Roses, put the coping stone upon the great political fabric. From Tudor times to the nineteenth century, the Justice of the Peace, who is above all things a royal county official, was the great governmental factor in the life of rural England. Lancashire and the other northern counties were definitely arranged soon after the Conquest; six of the Welsh counties emerged from the conquest of Wales by Edward I.; the remaining six and the border county of Monmouth were formed by the Parliament of Henry VIII. By the middle of the sixteenth century, the tale of the counties was complete; and, though survivals of old palatine privileges have lingered till our own time, for upwards of four centuries the county system has been, in the main, uniform and definite. Oddly enough, the race of Kings which did most for the county, abolished the count. The count or earl becomes, after the Conquest, a mere titular grandee, with a pension out of the revenues of the county from which he takes his title. The sheriff is in name *vice-comes* or earl's deputy; but practically he is an official of the royal Exchequer. Presently, he too sinks into comparative insignificance; and the King's travelling judges and his resident Justices rule the county in the King's name. It is only within the last half-century that the county has become a self-governing unit.

The Tudors.

Completion of county system.

The county has at the present day at least four distinct political aspects—parliamentary, military, judicial, administrative. The first is foreign to our present purpose, and may be briefly dismissed. The second and third may be treated together. The fourth, by reason of recent legislative changes, will require separate handling.

Aspects of the county.

A.—*The Parliamentary County.*

This, as we have said, is the creation of Edward I., or of the politicians whose ideas he borrowed. It is no part of this enquiry to deal with the subject of Parliament, the great organ of central government. It is sufficient to say, that the idea of a Parliament representing the local units of counties and boroughs seems to have grown out of the troubles of the Barons' War, and to have been definitely realised by Edward I. or his ministers at the close of the thirteenth century. When the scheme appears in its complete form, it is found that the national Parliament is a collection of lay and ecclesiastical grandees, of clerical proctors, and of elected deputies from counties and boroughs. In theory it is so still; but the clerical proctors have practically disappeared, and the lay deputies, though still retaining the names of county and borough members, are not elected by Quarter Sessions or even County Council, still less by burgesses acting as such. The sheriff is still returning officer for the county, and the mayor for the borough.[1] But each member of Parliament is member for a mere geographical area which may or may not coincide with a local government district; and the distinction between county and borough member tends rapidly to disappear. According to the Census Returns there are now fifty-seven Parliamentary counties for England and Wales, viz., the fifty-two traditional or (as they have been well called) 'geography book' counties,[2] two extra for the 'ridings' of Yorkshire, and three extra for the 'districts' of Lancashire. The statutory authorities on the subject are the Reform Acts of 1832, 1867, 1885, and 1918, in which the counties are scheduled. It may be mentioned that the Local Government Act of 1888 has transferred the powers formerly exercised by the county justices in the matter of Parliamentary

[1] As a matter of fact it was only during the last century that the mayor acquired the position of returning officer. For centuries the sheriff acted for the boroughs in his county.

[2] Maitland, *Justice and Police*, p. 112, n. 1.

polling and registration arrangements to the county councils. Further than this it is not necessary to go.

B.—*The Military and Judicial County.*

The ancient militia system.

From time immemorial the constitutional defensive force of the country, the *fyrd* or militia, has been a county force. An ancient theory, pertinaciously adhered to, laid it down that while every freeman was bound, if need were, to serve the State in arms, his service could not be demanded beyond the limits of his own county, at least unless the safety of his county was threatened from without. In ancient days the county militia was led by the earl in person ; when the local earldoms disappeared, the sheriff took his place as leader of the county force. But when, after the chaos of the Wars of the Roses, the Tudors set about the re-organisation of the militia, they determined to create new officials of greater social dignity than the sheriff to command the county forces. Hence we begin our list of county officials with—

(1.) **The (Lord) Lieutenant,** who is recognised as a normal official of the county by a statute of the year 1559, but whose duties are now mainly regulated by the Militia Act, 1882, as modified by the Territorial Forces Acts of 1907 and 1921. By the first statute the Lieutenant was deprived of almost all authority in connection with the militia, except the power of recommending candidates for a *first* commission to His Majesty's notice ; and this policy is continued in the new arrangements for the Territorial Army. The Lieutenant is, however, President of the County Territorial Association. In other respects the Territorial Forces are under the control of the War Office, in the same way as the professional army. In spite, however, of this diminution of his authority, the Lieutenant may still appoint *deputy-lieutenants*, in fact must appoint twenty, if so many there be duly qualified in his county. This is almost like saying that, the Lieutenant having little to do, must appoint twenty people to help him to do it. And, in fact, the office of deputy-lieutenant is more

Deputy-lieutenants.

ornamental than important.[1] The qualifications for it have recently been revised by an Act of the year 1918. The Lieutenant must not finally grant the commission of his deputy until he hears that the latter is "not disapproved by His Majesty." And His Majesty may signify to any Lieutenant his pleasure that any of his deputy-lieutenants be dismissed. On the other hand, His Majesty may appoint any three deputy-lieutenants of the county to act in the place of the Lieutenant during his absence; and the Lieutenant himself may, with His Majesty's approbation, appoint any deputy-lieutenant to act as *vice-lieutenant* during his own inability to act.

Vice-lieutenant.

But, besides his military position, the Lieutenant occupies important posts in the county as head of the *Commission of the Peace* and *Custos Rotulorum*. In the former capacity, he has the right to recommend to His Majesty the names of candidates for the office of Justice of the Peace; and in this important duty he is assisted by an advisory committee. In the latter he is officially entrusted with the care of the county archives. The position of *custos rotulorum* is often spoken of as identical with that of Lieutenant; but, as a matter of theory, it is quite distinct, having been in existence long before the Lieutenancy was created. It was as *custos* and not as Lieutenant that the official head of the county formerly appointed the clerk of the peace.

(2.) **The Sheriff,** an official whose exact origin it is impossible to trace, was at an early date, as we have said, the special permanent representative of royalty within the county. At first, perhaps, he was merely a local tax-gatherer, who collected the gifts of food and other produce due to the King by immemorial custom—a relic of the days when the King was entitled to be entertained by his subjects in his royal progresses, and long surviving in the vexed claim of *purveyance*. But as the power of royalty increased, the power of the sheriff increased with it. He held the *tourn* or *view* of

Increase of sheriff's power.

[1] This statement has become less true since the establishment of the Territorial Forces in 1907.

frankpledge, for inspection of the police system of the Hundred invented or re-organised by King Edgar. He administered the vast estates which, by the great confiscations of the Conquest, became the *demesnes* (or direct property) of the Crown. He ferreted out and enforced the feudal claims of the Crown to treasure-trove, wrecks, strays, deodands,[1] royal fish, and the like. He exacted the fines for breaches of the King's peace, and the other penalties imposed by the new criminal jurisdiction of the King's courts. For all these receipts he accounted twice a year at the King's Exchequer; and his accounts and reports were the means by which the King kept himself informed of the state of the country. As the feudal system hardened, and the claims of the Crown as lord paramount to wardships of heirs, to escheats and forfeitures, to fines for leave to sell, and the like, became a chief part of the royal revenue, it was the sheriff who reported to the Exchequer officials the windfalls which chance had brought in their way. As the Saxon ealdorman disappeared, the sheriff took his place, as has been said, as marshal and leader of the county militia. But, most of all, as the criminal jurisdiction of the Crown ousted the old popular system of wer-gilds[2] and purgation oaths, the sheriff became, not merely an administrative official, but a criminal judge, who tried the pleas of the Crown, as well as presided in the popular court of the shire. The middle of the twelfth century may be regarded as the culminating point of the sheriff's history. He was then, indeed, as has been well said, a "resident provincial viceroy," a king in his own county. What he could become was

Accounts at the Exchequer.

Acts as criminal judge.

[1] A *deodand* (a thing to be given to the gods) is the instrument by which homicide (wilful or accidental) is committed—the axe which wounds a man, the arrow which pierces his heart. Heathen piety devoted it to the gods; royal reforms secured it for the Crown. The deodand only disappeared in 1846.

[2] A *wer-gild* was a payment in the nature of compensation for a wrong committed. Its great importance in the history of law is that it is almost the first successful step in the supersession of the blood feud.

shown, even so late as the early thirteenth century, by the career of the turbulent Falkes de Breauté, the sheriff of six midland counties, who, during the minority of Henry III., set at nought the authority of Hubert de Burgh, Regent of the kingdom, and actually imprisoned the King's judges in Bedford Castle. It is hardly too much to say that, up to the close of the twelfth century, the history of the sheriff is the history of central government.[1]

Falkes de Breauté.

Decline and fall of the sheriff.

The outbreak of Falkes de Breauté was, however, a mere spasmodic revival of anarchy, due to the bad reign of John and the weakness of his successor. The death-blow to the sovereignty of the sheriff had been dealt by the second Henry, who would tolerate no rival in power. Even before his day, the itinerant judges of his grandfather had created a powerful counter-influence to the sheriff's authority; but the famous enquiry held by Henry II. in 1170, and the policy which followed upon it, are the real turning-points in the history of the sheriff. From that time the decline of the sheriff begins. He ceases to be a prosecutor of offenders against the King's peace; that duty is handed over to a local jury. By the Great Charter he is roundly forbidden to hold any pleas of the Crown in his own county. He ceases to be a criminal judge, he sinks into the position of an executive official. The change was vital, not only to the history of the sheriff, but to the history of England. Another reign such as that of Stephen; and England would have been covered with hereditary sheriffs of the Gascon type, defying royal authority, bent upon petty local independence, only to be crushed at last by an absolutism like that of Louis XI. From this fate England was saved by the reforms of Henry Fitz-Empress.

Inquest of the sheriffs.

Fall of the sheriff.

The decline of the sheriff continued. Such shadow of judicial power as he possessed at the close of the thir-

[1] A list of the sheriff's iniquities may be read in the articles of the enquiry of 1170, printed in Stubbs' *Select Charters and other Illustrations of English Constitutional History.*

teenth century disappeared before the new Justices of the Peace created by Edward III. The growth of direct Parliamentary taxation deprived his fiscal position of much of its importance ; and although, as Parliamentary returning officer, he had opportunity for a good deal of quiet misbehaviour, his illegality was no longer open and avowed. Finally, the creation of County Lieutenants by the Tudors deprived him, as we have said, of his duties as leader of the county militia, and left him, as he now is, the shadow of a great name, a splendid wreck.

It seems almost an insult to say that the position and duties of an official with such a history are regulated by the provisions of a mere modern statute. Yet such is the case. The Sheriffs Act of 1887, which repealed, wholly or in part, some eighty previous enactments, is our main source of information concerning the present position of the sheriff. There is a sheriff for each of the fifty-two traditional counties of England and Wales, except that Cambridge and Huntingdon may be united in one Shrievalty. It is said that there once was a woman sheriff of Westmoreland [1] ; and there would seem to be no doubt that, by virtue of the provisions of the Sex Disqualification (Removal) Act of 1919, women may now be sheriffs. Every sheriff (save the sheriff of Lancaster and the sheriff of Cornwall [2]) is appointed—'pricked' is the correct term—by His Majesty in person, on the nomination of a court which sits every year on the 12th November at the Royal Courts

The Sheriffs Act.

Pricking of sheriffs.

[1] The Shrievalty of Westmoreland was long an anomaly. From the reign of John to 1849 it was hereditary in the family of the Veteripont, sometime Earls of Thanet. In 1849 the male line became extinct ; but the last male holder of the office endeavoured to devise it by will. This attempt, however, was defeated, and the appointment of sheriff placed on a normal footing by a statute of the year 1850.

[2] Till the year 1888 the Corporation of London, by immemorial custom, elected the sheriff of Middlesex. Really, the two sheriffs of London acted as the sheriff of Middlesex. This little anomaly escaped the Act of 1887, but was swept away by the Local Government Act of 1888.

The nominating Court.

of Justice. This court, in theory the mere creation of a modern statute, is one of the most interesting survivals in English history. It consists of the Lord Chancellor, the Chancellor of the Exchequer (representing the vanished Lord Treasurer), the President 'and others' of the Privy Council, and the Lord Chief Justice, or any two of these persons, assisted by two judges of the High Court. This apparently arbitrary collection of great personages is really a desperate attempt (thoroughly characteristic of English law) to reproduce the old Royal Exchequer of the twelfth century, where the sheriffs laid their accounts before the royal revenue officials after the manner of a game of draughts ('chequers'), upon a cloth marked out into squares by rods, where little heaps of money represented counters in a game. The old court of Exchequer has gone; even its colourless substitute, the 'Exchequer Division,' has disappeared; and no more Exchequer 'barons' will be created. The intense tenacity of official conservatism procured that, as long as it was possible, one of the seats allotted to the two judges of the High Court at the nomination of sheriffs, should be occupied by the learned judge who was then affectionately termed the "last of the Barons."

Office compulsory.

Service in the office of sheriff is compulsory upon any one who cannot plead a legal exemption; but a person who has once served must not be chosen again within three years if there is another suitable person in the county. No one may be appointed sheriff unless he "have sufficient land within his county to answer the King and his people," *i.e.*, to be responsible for any damages which may be awarded against him for neglect of duty. Apparently there is no other positive qualification; but an officer of the regular forces on the active list is incapable of serving, and members of the House of Commons, and various other persons, are exempted from serving.

Duties of the sheriff.

At the present day, the sheriff may be described as the chief executive official of the superior courts, civil

and criminal, and as still, to some extent, an agent of the Exchequer. In the former capacity he arrests, either with or without warrant, any person suspected to have committed a felony; and every person in the county must be prepared, if called upon, to assist him in so doing.[1] When the assizes are being held, the sheriff is responsible for the maintenance of order in the court, unless the Quarter Sessions has specially committed the duty to the police. The sheriff prepares the 'panel' or list of jurors, taken from the jury lists already prepared, and sees that sufficient jurors are in attendance. The sheriff also executes the judgment of the superior court, whether criminal or civil, either by enforcing the sentence of death or imprisonment, by levying fines, by selling goods under 'execution,' or, in the exceptional cases in which a committal order is made by the High Court against a man for a civil debt, by arresting the body of the debtor. The sheriff also may have to hold an 'inquest' for the assessment of damages under a judgment of a superior court,[2] or under the statutes giving compensation to a man whose land is wanted for public improvements. But he is expressly forbidden to hold any inquest whereby any one is indicted.

Arrest.

Keeping the Assize Courts.

Jurors.

Execution.

Inquiry as to damages.

As a revenue official, the sheriff collects debts which are due to the Crown under recognisances, fines, bonds, and other instruments. As a rule, the Crown has the privilege of enforcing its claims in a summary way, without the formality of an action. This course is never adopted where there is any reasonable doubt as to the amount owing. But there rarely is any such doubt; and the Crown, after 'forfeiting' or 'estreating' the bonds

Crown debts.

[1] The inhabitants so assisting are known as the *posse comitatus*; and it is express modern law that, for default of being "ready and apparelled" to assist the sheriff, any person may be fined.

[2] Thus, if there is an undefended case in which the plaintiff claims 'unliquidated,' *i.e.*, non-specific damages, the court may give judgment generally for the plaintiff, and direct an enquiry to ascertain the amount of damages. The defendant may appear before the sheriff and give evidence in mitigation of damages; but he may not dispute the correctness of the judgment.

or recognisances, simply directs its officer to collect the amount due. In theory there is still a 'ferm of the shire,'[1] or rather a shire revenue (for the sheriff is expressly forbidden to let his county 'to ferm,' and he never receives it to ferm); and the accounts thereof are to be presented for audit at the Treasury within two months after the expiry of the sheriff's term of office.

Accounts.

Sheriff's liability.

The most unpleasant part of the sheriff's position is that he is personally liable for mistakes committed either by himself or by his officers, in the performance of his office. One section of the Sheriffs Act is so thoroughly characteristic of what we have called the 'legal' character of our local government, that it may be quoted in full. "A person unlawfully imprisoned by a sheriff or any of his officers shall have an action against such sheriff in like manner as against any other person that should imprison him without warrant."[2] He is liable, not only for wrongful imprisonments, but for escapes of persons imprisoned in civil actions, and for unlawful executions against property. For misconduct of a positive character, he may be summarily punished by any of the superior courts. On the other hand, the sheriff is entitled to a percentage on Crown debts collected by him,[3] and to certain fees and poundages in the course of his other duties.

Ante, p. 7.

Wrongful imprisonment.

Escapes.

Improper levies.

Allowances.

As a matter of fact, the sheriff performs none except the purely ceremonial duties of his office in person, and takes none of its remuneration. Every sheriff must

[1] In the Middle Ages the practice of commuting a number of miscellaneous liabilities of uncertain value for a fixed amount (*firma*) was very common; and the sheriff generally accounted for the normal receipts of his office at a fixed sum, known as the 'ferm of the shire.' The practice was the origin of our modern word 'farmer'—*i.e.*, the man who pays a fixed rent, as opposed to the bailiff who accounts for the balance of income and outgoings in detail.

[2] Presumably, however, the Sheriff would be entitled to the protection afforded by the Public Authorities Protection Act, 1893. (See *ante*, p. 99 n.)

[3] One shilling and sixpence in the pound up to £100, one shilling beyond.

appoint an under-sheriff and a deputy-sheriff. The former is the local representative of the sheriff in all legal business,[1] and receives the fees and commission, giving security to the sheriff to indemnify him from all claims arising from non-performance or improper performance of official duties.[2] The latter is the sheriff's London agent, having a residence or office within three miles of the Inner Temple Hall, and receiving and answering writs. Other officials of the sheriff are bailiffs, and sub-bailiffs, who do the purely ministerial work of the office.

Under-sheriff.

Deputy-sheriff.

Finally, it may be mentioned that there are still a few exceptional 'franchises' or 'liberties' in which the duties normally belonging to the sheriff are vested in some other person, known as the 'bailiff.' In such cases the sheriff is not responsible for mistakes which occur in the execution of process. But the Sheriffs Act contains provisions by virtue of which he may obtain practical control of the machinery; and it is express law that the sheriff, with or without his *posse*, may pursue a felon within the limits of a franchise.[3]

Franchises.

(3.) **The Coroner** appears first in the year 1194 as part of the new machinery devised to check the power of the sheriffs; but he, unlike the sheriff, was from the first an *elective* not an appointed official, although, as his name implies, he was principally concerned with the interests of the Crown. The Great Charter includes him in the clause which prohibits the sheriffs from holding pleas of the Crown; but it is noteworthy that the petitioning barons, upon whose 'Articles' the Charter

[1] As a matter of fact, even the duties of under-sheriff may be, and sometimes are, put out to a firm of solicitors accustomed to do them, upon such terms as may be agreed between them and the real under-sheriff. The latter then appears on ceremonial occasions only.

[2] It need hardly be said that this practice does not relieve the sheriff of personal liability to the public. It is merely a private arrangement between himself and his under-sheriff.

[3] So far as regards *police*, the powers of the exceptional franchises have been swept away by modern statutes.

is founded, had no wish to exclude the jurisdiction of the coroner. A statute of the year 1276 enumerates the duties of the coroner, and shows him to have been, even at that early date, a merely inquisitorial officer, having no power to award punishment. Very recent legislation has transferred the appointment of the coroner from the freeholders of the shire or district (for there may be more coroners than one in a county) to the county council; but in many respects the coroner retains the ancient characteristics of his office. Apparently there is no special qualification demanded by the law in the case of a county coroner; the old requirement that he should have "land in fee sufficient in the same county whereof he may answer to all manner of people," having been abolished by statute in 1926. But a borough coroner, where there is one, must be a barrister, solicitor, or legally qualified medical practitioner of not less than five years' standing in his profession. And a coroner must not be a member of the body which appoints him. A coroner appears still to hold his office for life, or rather, during good behaviour; being removable by the Lord Chancellor or the convicting court, on conviction of offence in the performance of his duties. A borough coroner may also, it is said, be removed by the borough council for good cause. Every county coroner must appoint, in writing, a deputy, approved by the chairman of the council which appointed him, to act in case of his own incapacity.

Formerly elected by freeholders.

Now chosen by county council.

Qualifications and tenure.

Deputy.

Coroner's inquest.

It is the duty of a coroner to hold an enquiry or inquest by the oaths of at least seven and not more than eleven good and lawful men,[1] in all cases of sudden and unaccounted for deaths where there is the least suspicion of foul play, in all cases of death in prison (whether sudden or not), and in cases of deaths in a lunatic asylum or a baby-farm, unless certain medical certificates are forthcoming, and in all cases of treasure-trove occurring within his district. It is said also that, by strict law, the coroner must hold an inquest in cases of house-

[1] A jury may now be dispensed with in certain cases.

breaking; but in practice this duty has long been neglected. The coroner of the City of London has a statutory duty to enquire as to the origin of fires in the City.

Verdict.

The jury finds the cause of the death, or the fact of the discovery of treasure; but the verdict need not be unanimous. For, if the minority does not exceed two, the coroner may accept the verdict of the majority. If the verdict is 'murder' or 'manslaughter' by any person, the coroner may apprehend the person named and commit him for trial at the next assizes. But recent alterations in the law have provided that if, during the inquest, criminal proceedings are instituted against any person in respect of the death in question, the coroner's inquest shall be adjourned until their conclusion. If the coroner commits for manslaughter, he may release the accused on bail.

See *post* p. 130.

The coroner also acts as substitute for the sheriff in certain cases in which the sheriff is personally interested.

(4.) **The Justice of the Peace.**—The judicial power formerly belonging to the sheriff has now largely passed to the Justices of the Peace in their corporate capacity. Herein, possibly, lies the explanation of the fact that the Crown, after its experience of the sheriff's misdemeanours, was once more willing to entrust judicial duties to local officials. The sheriff was a single person, and could take secret counsel with himself when on evil bent; the Justice of the Peace could only act in important matters as member of a body of his fellows, and in the multitude of counsellors there lay safety—for other people.

Early history of office.

But the Justice of the Peace was not, originally, a judicial officer at all. Historians trace the beginnings of his existence in the knights assigned by Hubert de Burgh to enforce the taking of the oath of peace proclaimed in the year 1195. Less than a century later, guardians of the peace (*custodes pacis*), one for each county, were regularly elected in the shire court, to carry out the provisions of the great statute of Win-

The peace oath.

Guardians of the peace.

chester,[1] issued in the year 1285. But the commencement of the reign of Edward III. saw these officers turned into royal nominees; and this character they have ever since retained. Later in the same reign, the guardians of the peace were empowered by statute to hear and determine felonies; and thus, before the fourteenth century had run out, they acquired their present title of Justices of the Peace.

Become rural nominees.

Growth of the power of Justices.

The career of the Justice from the days of Edward III. to our own has been one long triumph, at least if growing importance can be regarded as a test of success. Towards the end of Edward's reign came the terrible visitations of the Plague, or Black Death, shaking the social fabric to its very foundations. The working classes, reduced to half their former numbers by the pestilence, seized the opportunity of demanding enhanced prices for their labour. The old *régime* of lord and serf broke down; the era of free labour had come. Quite naturally, and, to some extent at least, in perfect good faith, the capitalist classes attempted by repressive legislation to check what they deemed to be the outrageous demands of the manual workers. One Statute of Labourers after another provided an elaborate system for the regulation of wages and hours of labour; and the enforcement of these statutes was invariably committed to the Justices of the Peace. Sometimes they were merely directed to enforce the scale of wages definitely fixed by statute; oftener they were entrusted with the more delicate task of 'assessing' and proclaiming, at annual intervals, the limits beyond which wages, either by piece or time, might not rise or fall. This latter policy, after vibrating backwards and forwards during the two centuries and a half immediately following the Black Death, was definitely affirmed by a great Elizabethan statute of the year 1563, and continued in practice till the middle of the eighteenth

The Statutes of Labourers.

Assessment of wages.

[1] This statute revived many of the decaying institutions of Saxon England—such as the *fyrd*, the watch, the hue and cry, &c.

century, in theory till the beginning of the nineteenth. Not only were the Justices the authority for the assessment of wages ; to them was committed all jurisdiction in disputes between master and workman.

The Poor Law.

The break up of medieval society which followed upon the Black Death ultimately led to the appearance of the great Poor Law question. We have seen in an earlier chapter how, when the statesmen of Elizabeth's reign definitely placed the administration of poor relief on the basis which it continued to occupy till the beginning of the nineteenth century, they deliberately made the Justice of the Peace the corner stone of the system. The Justices appointed the parochial overseers and approved the poor rate made by them, or heard objections against it. The Justices compelled negligent parishes to do their duty, and helped the feeble parish with 'rates in aid.' Later on, the Justices enforced the law of settlement by ordering the removal from a parish of new-comers who seemed likely to come upon the rates. And, as we have seen, the position of the Justice in the Poor Law system remains to a limited extent, at the present day ; although recent changes in the law have robbed him of most of his functions in that respect.

Overseers' Poor rates.

Settlement and removal.

Enforcement of morality.

Generally it may be said that the Justice of the Peace was, until the passing of recent legislation, the presiding deity of that religion of parochial self-government and county administration which was initiated by the Tudors and developed by their successors. In addition to his judicial or quasi-judicial duties in criminal matters, the Justice of the Peace was the great maintainer of order, religion, and morality in his neighbourhood. He enforced the statutes for uniformity of worship, hunted out dissenters, licensed alehouses, repressed profanity and disorderliness, prohibited Sunday trading and the like. It is the custom for poets and novelists to speak of the squire as though he were, *quâ* squire, the 'God Almighty of the country side.' This is a mistake. Since the disappearance of feudal rights in the Wars of the

Roses, the landowner, as such, has had no other advantages than those which wealth and social status could give him. It was as Justice of the Peace and not as squire that he reigned. Let him but be obnoxious to the Government, let him be excluded from the Commission of the Peace; and his power was gone. The governing caste in English country life since the Reformation has not been a feudal but an *official* caste. The first great blow struck at the position of the squire has not been an attempt to deprive him of his acres. It has been a great shearing away of the powers of the Justice of the Peace. Let us see what is left.

Present position.

Appointment.

The Justice of the Peace is now appointed by the Crown, upon the advice of the Lord Chancellor,[1] and the recommendation of the (Lord) Lieutenant, who is himself the head of the Commission of the Peace for the county. Various suggestions have been made as to the motives which do, or should, influence the Lieutenant in his recommendations; but they are foreign to our purpose. It is, however, worthy of note, that, upon the recommendation of a Royal Commission, the Lieutenants of the counties have appointed advisory committees (approved by the Lord Chancellor) to assist them in their choice of persons to be recommended. A recent statute, the Justices of the Peace Act, 1906, has abolished the property qualifications which, with certain exceptions, were at one time required for the appointment of county Justices.[2] There is still a theory that the Justice of the Peace must be resident in his county; but in practice the rule is disregarded. In theory, also, the county Justice can claim four shillings a day for attendance at sessions; in practice he is unpaid. He holds office simply 'during pleasure'; and he can be struck off the roll by His Majesty at any time, without reason assigned. Again, in practice, he is never removed, except for misconduct or incapacity. The barriers of marriage and

[1] In the palatine counties, the advice is tendered to His Majesty by the chancellor of the duchy.

[2] Borough Justices needed no property qualification.

sex no longer exclude a woman from being a Justice; and many women have been appointed as Justices. But no one can be a Justice who has been found guilty of corrupt practices at elections, nor a person who is an uncertificated[1] bankrupt; and a sheriff, during his year of office, may not act as a Justice, though his name may remain on the commission.

Quorum.

Formerly, there was a highly appreciated distinction between Justices *of the Quorum* and not of the Quorum, as witness the well-known scene in Sheridan's *Scheming Lieutenant*. For, in days when the education of a country Justice was apt to be peculiar rather than extensive, it was the habit of the Crown officers, in framing the Latin Commission of the Peace (the authority for the execution of his office by the county Justice), to draw a line between those simpler duties which any Justice was thought capable of performing, and those difficult functions which required the handling of the more skilled. More especially was this the case, when the duty in question required the presence of more than one Justice (as most of the heavier duties did). The Commission then, in imposing the performance of such duty upon "you or any two of you," would add, "of whom" (*quorum*) "X, Y, Z," &c., "shall be one." The persons thus flatteringly distinguished held their heads a shade higher than their less honoured brethren at Quarter Sessions; and much jealousy was the result. As the education of Justices (and, perhaps one should say, of Justices' clerks) has improved, the practice has fallen into abeyance; and though for a long time the tradition was religiously preserved by the omission of one unfortunate name from the list of the Quorum, even that survival has disappeared under recent arrangements.

Duties of the Justice.

Of the multitude of duties which still fall to the lot of

[1] The mere fact of *discharge* from a bankruptcy does not remove the disqualification, unless the bankrupt has received a *certificate* exonerating him from personal blame. But a disqualification by bankruptcy only lasts for five years from discharge; and a conviction for corrupt practices for seven from its date.

the Justice of the Peace, it will only be possible to give the barest outline. They can be most conveniently treated of under two heads—those which are performed in sessions, and those which are performed out of sessions. Inasmuch as we have already discussed the position of the Justice when acting in Petty (or Special) Sessions, we can here confine our remarks on Sessions to the Quarter (or General) Sessions of the Peace for the county.

Ante, p. 40.

Quarter Sessions.—By a statute of the year 1362, it is provided that all Commissions of the Peace shall expressly direct the Justices to "make their Sessions four times by the year," viz., at Epiphany, Lent, Pentecost, and Michaelmas; and from that day to this, the Quarter Sessions has been an established institution of English county life. Strictly speaking, there should be sixty courts of county Quarter Sessions in England; for the three Ridings of Yorkshire and the three 'Parts' of Lincolnshire, the *soke* or liberty of Peterborough, the Isle of Ely, and the two divisions of East and West Sussex, have each a separate Commission of the Peace and Court of Quarter Sessions, while Suffolk, though having but a single Commission of the Peace, has two Courts of Quarter Sessions.[1] Nevertheless, the unity of the traditional county was, until lately, preserved in the special *Gaol Sessions* which were held every year in the divided counties, and at which the Justices of all the Divisions attended to exercise jurisdiction in the matter of the maintenance and due regulation of the county gaol and house of correction, as well as the reformatories and industrial schools. But a statute of the year 1877 has transferred the control of prisons and houses of correction to the Secretary of State; and the Local Government Act of 1888 has handed over to the county councils the management of reformatory and industrial schools. So Gaol Sessions are no longer necessary.

Gaol Sessions.

[1] On the other hand, Hampshire appears to have two Commissions of the Peace (one for the Isle of Wight), but only one Court of Quarter Sessions.

Since the Local Government Act of 1888 has expressly taken away from the Justices in Quarter Sessions the greater part of the vast administrative duties which they formerly exercised, the main bulk of Quarter Sessions work has become of a judicial character. Nevertheless, in spite of the Act, some administrative duties remain, and will require a word of reference. Quarter Sessions work.

But first, let it be premised that the Court of Quarter Sessions, consisting as it does of all those Justices for the county who choose to attend, is often a numerous body, incapable of conducting proceedings in an orderly manner without some organisation. Accordingly it elects a *chairman*, usually some one having special legal knowledge, who acts as president and mouthpiece of the Court. But the decisions of the Court are the decisions of the majority of its members, even where, as in Middlesex, the chairman is a professional judge, appointed by the Crown, and paid by the County Council. Chairman.

The judicial business of the Quarter Sessions falls into two great branches, which require separate treatment. These branches may be defined as *original* and *appellate*. Judicial business.

(i.) The *original* or *primary* jurisdiction of the Court is chiefly concerned with the trial of those crimes which are deemed too serious for disposal by a court of summary jurisdiction, but not serious enough imperatively to demand trial by a judge of assize.[1] "Indictable offences not specially reserved for the assizes," we may term them. It is a theory of English law that no offence can be tried by Quarter Sessions unless there be express statutory authority for the practice. As a matter of fact, the statutes which confer general jurisdiction upon Quarter Sessions are so wide in their terms, that Primary.

[1] Presumably, an assize judge has a perfect right, if he pleases, to try all criminals awaiting trial by a court of high criminal jurisdiction; but prosecutors and prisoners have no longer the right to insist on a trial, before a judge of assize, of offences triable at Quarter Sessions.

the Justices try all indictable offences except those which are expressly reserved by statute for the assizes.[1] These offences include treason, capital felony, felonies punishable with penal servitude for life on a first conviction (such as manslaughter and arson), also some kinds of perjury, bribery, bigamy, forgery,[2] and others.

Offences properly triable at Quarter Sessions are tried in very much the same way as offences tried at assizes. The accusation is (in the majority of cases) first examined by the 'grand' or accusing jury, who find a 'true bill,' or 'throw out the bill'; according as they believe or do not believe, after hearing the evidence adduced by the prosecution, that there is a reasonable probability of conviction. If the grand jury find a true bill, the prisoner is then tried by a petty jury; the magistrates, that is, virtually, the chairman, acting as judge, and pronouncing sentence in accordance with the finding of the jury.[3]

[1] Principally by statutes of the years 1842 and 1925.

[2] Some forgeries are punishable with penal servitude on a first conviction, but others are not.

[3] It seems almost necessary to say a word about the duty of the citizen to serve on juries. The matter is now regulated mainly by statutes of the years 1825, 1870, 1898, and 1922. In counties, all men and women between the ages of twenty-one and sixty, having £10 a year in freehold or copyhold lands, or £20 in leaseholds above twenty-one years, all householders assessed to general rate or inhabited house duty at £20 (in Middlesex and London £30), are qualified and bound to serve on all petty juries in trials held by superior courts, and on both grand and petty juries in sessions cases tried in the county where they reside or own property. In boroughs, all the burgesses are qualified and liable to serve both on grand and petty juries. 'Special' jurors (for civil cases) must be either esquires, bankers, or merchants, or persons of higher degree, or occupants of premises of higher value, varying with the place in which they are situated. County Court jurors are taken from the ordinary jurors' book; but there is a limit to the number of times they may be called upon to serve. Jurors at an ordinary coroner's inquest require no special qualification. There are numerous exemptions from the duty of serving, *e.g.*, barristers, convey-

(ii.) The *appellate* jurisdiction of Quarter Sessions is perhaps equally important with its primary jurisdiction. Generally speaking, there lies an appeal to Quarter Sessions from every order of a court of summary jurisdiction which inflicts a sentence of imprisonment, as well as from many other magisterial decisions. Appeals also lie from the making of rates and the drawing up of valuation lists; and in these cases, too, the appeal lies to Quarter Sessions. Appeals to Quarter Sessions are in the nature of rehearings; and the appellant is entitled (subject to certain provisions as to giving notice) to deal with matters of fact as well as of law. The Court of Quarter Sessions may reverse or amend the order appealed from, and award costs. In fact, an appeal to Quarter Sessions is a strong illustration of the truth that the Petty Sessional Court is really only a local committee of the county Justices, whose proceedings may be varied in any way by the full body. Beyond Quarter Sessions there is no direct appeal; but the Sessions may voluntarily state a case on a point of law for the opinion of a superior court, or the latter may itself order the Court of Quarter Sessions to do so. When sitting as a court of appeal the Quarter Sessions acts without a jury. Appellate.

The administrative side of Quarter Sessions has, admittedly, been robbed of the bulk of its importance by the Local Government Act of 1888. Still, Quarter Sessions has certain administrative work to do. It appoints a county licensing committee from amongst its own members, a committee without whose approval no *new* liquor licence is good; and it is the body to Administrative work of Quarter Sessions. Licensing Committees.

ancers, solicitors, medical practitioners in actual practice, clergymen and Nonconformist ministers, peers, members of Parliament, &c. Burgesses of a borough which has its own Quarter Sessions are not liable to serve on petty juries at Quarter Sessions for the county. Women may be exempted or excluded at the discretion of the judge. The machinery is recast by the Juries Act, 1922.

which, under the Licensing Act, 1904, the question of *renewing* licences must be referred in certain cases, with a view to their extinction as redundant, on payment of compensation. It appoints another committee to visit and inspect the county gaol and to bring any abuses found there to the notice of the Secretary of State, as well as to carry out the regulations laid down by the latter for the conduct of prisoners and the prison. It appoints a third committee to carry out the provisions of the Lunacy Act, 1890, with respect to non-pauper lunatic asylums. It was the body entrusted with the marking out of the electoral divisions for the first elections under the County Councils scheme of 1888. And, although its powers in relation to Parliamentary election matters have been transferred to its new rival, Quarter Sessions still retains the right of marking out its county into Petty Sessional divisions. But the financial duties of Quarter Sessions, once so important, have now absolutely gone.

Prison Visiting Committee.

Asylums Inspection Committee.

Single Justices.—The duties which a Justice of the Peace may be called upon to perform out of sessions are still very numerous and important; though they are tending, perhaps, to diminish. Strictly speaking, all the preliminary enquiry which we have previously described as preceding the committal for trial of an alleged offender, though it usually takes place at Petty Sessions, may be done by a single Justice sitting in his own parlour. And the very fact that so much of this preliminary work goes to Petty Sessions, has rendered the duty of the single magistrate with regard to one important subject more critical than ever. This is the subject of *bail*. The law of England is rightly tender of the liberty of the subject, and refuses to allow a man to be detained in prison, even for a few days, merely because he happens to be charged with some offence. The rules on the subject of *Habeas Corpus* are familiar, at least in outline, to most Englishmen; but the Habeas Corpus procedure requires the interference of a superior judge, and, in the vast majority of cases, the procedure by

Ante, p. 41.

Bail.

simple application for bail is quicker and cheaper. The Justice (in some cases the mere police-officer) before whom an alleged offender is brought, at any time before his actual trial, may (in some cases must) allow him to go at large on bail, that is, upon the undertaking of certain sureties to pay a sum named if he is not forthcoming when wanted. The law upon the subject of the right to bail is very simple. When a man is charged with treason, no magistrate or police-officer may grant bail without an order of a Secretary of State or the King's Bench Division. When a charge is of felony, or some one of about a dozen specified misdemeanours,[1] the magistrate may grant or refuse bail according to his discretion. In all other cases of alleged misdemeanours, the magistrate *must* (probably) grant bail, even though he be aware that the accused is contemplating flight to America. But he may fix the sum to be given as security at a pretty high figure ; the only restraint on his power being the somewhat vague declaration of the Bill of Rights, that "excessive bail ought not to be required." And he may enquire sharply into the solvency of the proffered sureties. Moreover, the surety may lay forcible hands on the accused if he be evidently attempting an escape ; for, in legal theory, the body of the accused has been *bailed*, *i.e.*, handed over to him—the accused is, in fact, his bondsman.

Warrants

Also, the single Justice issues warrants to arrest alleged offenders, to compel the attendance of witnesses, and to search suspected places. Various statutory declarations or assertions may be made before him ; and he may even administer oaths in matters within his own jurisdiction. He is the authority in the matters of billeting and impressment of carriages for military purposes under the Army Act. He is entitled, notwith-

Taking of declarations and oaths.

Billeting and impressmen.

[1] The distinction between *felony* and *misdemeanour* is arbitrary, and can only be found by reference to law books. Formerly every conviction for felony involved forfeiture of the offender's goods. Almost all the more serious offences are felonies ; but sometimes the line is very arbitrarily drawn. Forgery is a felony, perjury is not.

Prisons.

standing the transfer of prisons to the Secretary of State, to visit and inspect the prisons within his county.

Keeping the peace.

In the matter of his ancient and original duty, the keeping of the peace, he is still the first resort of the law-abiding citizen; we see him 'reading the Riot Act'[1] before the sterner hand of the central Government takes up the reins of authority.

Constables.

Although the control of the county police as a whole is now vested, as we shall see, in a newly created body, the single Justice is still entitled to command the allegiance of the individual constable; and the latter is quite safe in acting upon the Justice's warrant, unless it is manifestly illegal.

Special Protection of Justices.

By reason, no doubt, of the facts that he is practically an unremunerated official, and that he is, in the majority of cases, not a professional lawyer, the Justice of the Peace enjoys a special protection somewhat anomalous in English law. No action may be brought against a Justice on the mere ground that he has wrongly exercised a discretion given him by statute; in order to succeed, the plaintiff must prove that the Justice acted *maliciously and without probable cause*. No action at all will lie against a Justice for an act which he was ordered by a superior court to do, nor for the granting of a warrant of arrest or distress, where the grant has been confirmed on appeal. Even where the plaintiff alleges the doing by a Justice of a wholly illegal act, he must wait until the act has been formally quashed by a superior authority before bringing his action. And yet he must, as must all persons bringing actions against public authorities, acting in the discharge of their public duties, bring his action within six months after the doing of the act complained of, in all cases the plaintiff must prove actual damage, and he must give the offending Justice opportunity of tendering amends. If he does not, he is liable to be condemned in costs.

[1] More correctly, reading the proclamation contained in the Riot Act.

We may conclude our account of the judicial county with a brief word concerning—

(5.) **The Clerk of the Peace,** whose statutory history reaches back to the middle of the sixteenth century, and who was formerly appointed (apparently during pleasure only) by the Lieutenant of the county in his capacity of *custos rotulorum*. In course of time, however, the Clerk of the Peace acquired a freehold in his office; and this privilege he retains, notwithstanding that he is now appointed by another authority. It was his duty to take charge of all documents belonging to the county, amongst others, papers deposited pursuant to Standing Orders of Parliament or the Lands Clauses Consolidation Acts, the warrants of the appointment of sheriffs of his county, the accounts of public water-works, and so on. Moreover, he set in motion the machinery for filling up the lists of county jurors and voters, and kept the lists when completed. Further than this, he was not only the mouthpiece of the county for business purposes, its agent in legal proceedings, and the registrar of its Quarter Sessions; but the property of the county was deemed to be legally vested in him. But the Local Government Act of 1888 has transferred his appointment to the Standing Joint Committee of Quarter Sessions and County Council, and his salary is paid by the County Council; while in the latter is now vested all the property of the county save certain ornamental possessions such as portraits. The Clerk of the Peace is expressly disqualified from acting as clerk to any bench of Justices for a division of his county.

Custody of documents.

Jurors' and voters' lists.

Trustee of county property.

CHAPTER IX

THE ADMINISTRATIVE COUNTY

THE administrative county, as a separate unit of local government, is the creation of the Local Government Act, 1888, a statute which had for its obvious (though not avowed) object, the transfer of administrative county business from Quarter Sessions to elective councils. The experiment thus tried has, unquestionably, proved to be a success ; and subsequent legislation has tended greatly to increase the importance of the administrative county. The most conspicuous example of this policy is the Local Government Act, 1929, which, however, as has before been pointed out, is not yet (1929) actually in force. Generally speaking, the chief argument adduced in support of this policy is, that the county council is an elective body, and that its rule, therefore, is a development of self-government. The force of this argument is, however, somewhat weakened by the fact that, in the latest legislation, the powers and duties of the county council are increased at the expense, not of appointed persons, but of other self-governing units, *e.g.*, the Poor Law Unions and the sanitary districts. This objection is admitted ; but it is opposed by the desire to centralise in the authorities of larger units powers which, in the hands of smaller authorities, are apt to be ineffectively exercised.

The division of England and Wales into administrative counties is supposed to follow the boundaries of the parliamentary counties, except that, for purposes of co-ordination with judicial boundaries, there are additional administrative counties for Suffolk and Sussex, the Isle

of Ely, and the soke of Peterborough, making sixty in all, or, with the addition of the Metropolitan area, which ranks as a separate administrative county, sixty-one.

In each administrative county there is an elective **county council,** consisting of such a number of persons as the Ministry of Health from time to time directs. Each county is divided for election purposes into two classes of constituencies—boroughs and county divisions [1]; but each borough which, in the allotment of seats, is entitled on the basis of population to more than one member, must be subdivided into as many 'wards' or 'electoral divisions' as there are members, so that there may be one member and no more for each ward or electoral division. In the boroughs, the subdivisions follow the lines of the municipal wards; while the county divisions follow those of the county districts (*i.e.*, sanitary districts). Where it is necessary to subdivide a county district, the boundaries of parishes are, where possible, followed.

Electoral divisions.

The electors to the county council were originally divided into two classes, corresponding with the distinction between boroughs and county divisions. In the borough constituencies, the electors were the burgesses enrolled under the Municipal Corporations Act of 1882 as electors to the borough council; in the county divisions, persons who, if their place of abode or occupation had been a borough, would have been qualified to be enrolled as burgesses, together with £10 occupiers of property within the division. We need not here discuss the nature of burgess qualification—that will come later on. But

Local Government electors.

[1] The number of combinations now possible with the name 'county' is apt to be rather bewildering. A 'county division' under the Act of 1888 must be distinguished from a 'county district' under the Act of 1894; and yet the county division is, so far as possible, to follow the lines of the county district. The 'county at large' appears to be the 'geography-book county'; the 'entire county' is much the same thing; but the expression is only used of a county at large in which there are more than one administrative counties. The expression 'division of a county' appears to be reserved for the older institutions, such as hundred, lathe, wapentake, &c.

it may be said generally, that, by virtue of the Representation of the People Acts, 1918 and 1928, all persons, male or female, of the age of twenty-one, who are *occupying* land or premises in the county, and have so occupied for six months, and their wives or husbands who are *residing* with their spouses in the premises which confer on the latter their votes, are now, if registered on their borough or parish roll of electors, entitled to vote at county council elections as 'local government electors.' The only general disqualifications appear to be alienage and want of full age. It must, however, be remembered, that the burgesses of certain large boroughs, known as 'county boroughs,' will take no part in elections for the county council of their 'county at large'; their borough being for most purposes independent of the council for the county at large—being, in fact, almost an administrative county in itself.

Disqualifications.

Post, p. 194.

County aldermen.

Besides the elective councillors, the county council contains 'county aldermen' and a chairman. The aldermen, one-third in number of the ordinary councillors,[1] are elected by them for six years, but retire by halves, so that there is an election of aldermen every three years. The chairman is elected annually by the whole council. The ordinary councillors are elected for three years, and retire together. Chairman and aldermen may be chosen either from among the existing councillors, or from other persons qualified to be councillors. But whereas the election as alderman vacates the seat of an ordinary councillor, election as chairman does not.

Chairman.

Ordinary Councillors.

This brings us to the qualifications of councillors. No one can be elected an ordinary councillor nor (therefore) an alderman or chairman of county council, unless he either be qualified to be councillor of a borough within the county, or is the owner of property held by freehold, copyhold, leasehold, or any other tenure within the county. Of course women may be county councillors. To be qualified as a borough councillor a

Post, p. 137.

[1] This virtually makes it necessary to fix the number of the ordinary councillors at some multiple of three.

person must be either entitled to be registered as a local government elector, or be entitled to or rated in respect of property of a certain value,[1] or have actually resided for twelve months within the borough.

Disqualifications.

The only disqualifications for election as a councillor, other than those which disqualify as an elector, appear to be—

(*a*) *Office.*—No person holding paid office in the gift of the county council can be a member thereof.

(*b*) *Contractorship.*—No person who has any interest, direct or indirect, in a contract with the council can be a councillor.

(*c*) *Bankruptcy.*—No uncertificated bankrupt can be a member of a county council for five years after his discharge from bankruptcy.

(*d*) *Conviction for corrupt practices.*—Various breaches of election law disqualify persons convicted of them for municipal office for a greater or less time, and to a greater or less extent.

But being a minister of religion never was (as with a borough councillor) a disqualification; and the disqualification formerly attaching to women, whether married or single, was removed by an Act of the year 1907.

The matters entrusted to county councils by the Act of 1888 and subsequent statutes may be grouped under eleven heads—

(1) *Highways.*—We have already noticed, in dealing with the sanitary authorities, how greatly the functions of county councils in the matter of roads will shortly be increased at the expense of the districts. Not only does the county council acquire, *primâ facie*, jurisdiction in the matter of main roads, and the new 'classified' roads; but it takes over the whole of the highways in the rural

Ante, p. 77.

[1] Ownership of £1000 value (realty or personalty) where the borough has four wards, £500 where it has less; rating in respect of £30 a year where it has four wards, £15 where it has less.

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districts. We have discussed the details of these arrangements at some length in an earlier chapter; and there is no need to repeat them here. Allusion may, however, be made to a legal difference, apparently very technical, between the highway rights of an urban and a rural authority respectively, which is of some importance. Legally speaking, the urban authority is actually the owner of the surface of its highways, while the rural authority only exercises control over the highways committed to its care; the presumption in both cases being that the soil of the highway, subject to the rights of either authority, is vested in the adjacent land-owners. The consequence is, broadly, that some acts of third parties are actual trespasses against the urban authorities, and therefore actionable; while, unless they amount to nuisances, they cannot be stopped by a rural authority. Apparently (though the matter is not free from doubt) this position will remain unaltered by the transfer of road authority to the county councils by the Local Government Act, 1929, *i.e.*, urban roads will remain urban, and rural roads rural, as regards the above difference. But, as respects rural roads, the county councils will have certain *functions* of an urban authority, as well as in respect of urban roads. Finally, when a rural district is converted into an urban district, the Order converting it may provide that all its roads shall continue to be under the management of the county council.

Ante, p. 87.

(2) *Town Planning.*—Reference has also been made, in a previous chapter, to the increased powers in respect of 'town planning' conferred on county councils by the Local Government Act, 1929. It looks as though the county council would, in the future, become the sole authority in this matter of great and growing importance, at any rate outside the boroughs.

Bridges.

(3) *Bridges.*—A county council is also the authority

for the management and repair of existing county bridges, and for the purchase and erection of new ones.

(4) *Health.*—Besides having a general power to make by-laws for the prevention and suppression of nuisances, not otherwise summarily punishable, the county council is expressly constituted an authority for the prevention of river pollution within its county, and for the execution of the statutes relating to the contagious diseases of animals and to destructive insects. It is also the fish conservancy authority, and the protector of wild birds for the county; though these functions may possibly have more regard to industry and pastime than to health. For these and other purposes, it is required by statute to appoint a Public Health and Housing Committee; and allusion has been made in a previous chapter to the increased powers and duties of the county council in the matter of rural housing, by the Housing and Town Planning Acts. But perhaps the chief importance of the county council in the matter of public health is its power to enforce the performance of their duties by the minor local authorities, the district councils, and, in default, to take over the functions of those bodies in neglected matters. This power may be exercised on the representation of a parish council in certain cases; and, though, perhaps, somewhat inconsistent with the general principles of English local government, which, as explained, is independent, not hierarchical, is of undoubted value.

River pollution.

Contagious diseases of animals.

Destructive Insects.

Fish conservancy.

Wild birds.

Ante, p. 84.

Ante, p. 8.

The increased responsibilities of the county council in the matter of the provision of hospitals for infectious diseases have been already alluded to, as have also its increased powers to give financial assistance to the district authorities in its area, in the matter of the provision and maintenance of sewers and water-supply.

Ante, p. 83.

Reformatory and industrial schools.

(5) *Education.*—The management and support of reformatory and industrial schools is now transferred from Quarter Sessions to the county council. But, in addition to this, the county council was in 1902 made the education authority for all rural districts within its area, all municipal boroughs with less than 10,000 population, and all other urban districts with less than 20,000. As such it is, as we shall see, the supreme local authority for purposes of elementary education, and has also considerable responsibilities in connection with higher education, which before 1902 had been organised or subsidised by the County Council under a system of grants from the general Inland Revenue. The subject of State education is discussed in a later chapter.

Elementary and higher education.

(6) *Poor relief.*—At the present time, the county council is not a Poor Law authority; though its duties bring it occasionally into touch with the Poor Law system. For example, it maintains pauper lunatic asylums; it has a certain supervision over the election of Guardians; and it makes certain payments to the latter out of the Exchequer Contribution Account towards various expenses.

But one of the most important objects of the Local Government Act, 1929, is to substitute the county council for the Guardians as the Poor Law authority for all districts outside the county boroughs.

In order to enable it to perform its new duties, every county council must submit to the Minister of Health an 'administrative scheme' which shall provide for the constitution of a **public assistance committee** of itself, which shall be directly charged with the administration and supervision of its new duties in the matter of Poor Relief, or, as it will in the future be termed, 'public assistance.' Such committee may, however, be identical with any other committee of the council.

But whether or not a separate public assistance committee is created, the committee performing public assistance functions may comprise, in addition to members of the council, outside persons, not more than one-third in number of the committee, some of whom must be women. Any of the Poor Law functions of the council, except the power of raising a rate or borrowing money, may be delegated by the council to this committee; and, in any case, all matters relating to such functions (except as aforesaid) will stand referred to the committee for consideration and report, which report must, except in a case of urgency, be considered by the county council before acting.

Furthermore, the county council's scheme must provide for the division of its area into districts, each under a local sub-committee of the public assistance committee, which local sub-committee will be charged, under terms imposed by the county council, with the actual administration of poor relief (other than the appointment and dismissal of officials) within its district. The local sub-committee will be known as the **guardians' committee,** and will consist of from twelve to thirty-six members, including district councillors, members of the county council itself for the electoral divisions in the district, and outsiders (among them women) appointed by the county council, to an extent not exceeding one-third of the total membership of the sub-committee. And, in making these appointments, the county council is required to have regard to the desirability of including members of the existing Poor Law authorities, and other persons of experience in poor relief.

Thus the Poor Law clauses of the Local Government Act, 1929, are concerned rather with the machinery than with the substance of the Poor Law; for it is even provided that separate accounts of receipt and expenditure in Poor Law matters

shall be kept. And it is clear, that it is the intention of the Act that, so far as possible, the experience of the existing Poor Law authorities shall be utilised. Nevertheless, it is evidently hoped, that the larger area and wider outlook of the county council may, especially in the matter of finance, result in greater efficiency and economy than were possible to the older units; and the change is, obviously, a further step in the direction of centralisation of poor relief, inaugurated by the Poor Law Amendment Act of 1834. But there is a pointed reference to future developments in the direction contained in section 5 of the Act, that a county council's scheme "shall have regard to the desirability of securing that, as soon as circumstances permit, all assistance which can lawfully be provided otherwise than by way of poor relief, shall be so provided." And, as an instalment of such development, it is provided that the functions of the Guardians under Part I. of the Children Act, 1908 [1] shall be discharged by the county council under the Maternity and Child Welfare Act, and those relating to vaccination as functions relating to public health.

Under the new Act, the county council also takes over the existing functions of the Guardians in the matter of the registration of births, marriages and deaths; and schemes for the organisation of registration districts, and the distribution of duties among registration officers (now to be salaried officials of the council), are to be prepared by the council before 1st April, 1932.

Pauper lunatics.

Emigration.

Charity enquiries.

It provides and maintains pauper lunatic asylums for its county, it may advance money for the purpose of assisting emigration, it may contribute towards the expense of holding enquiries by the Charity Commissioners, and it may, in default of action by a district council, take over the powers

[1] Relating to the protection of infant life.

belonging to that body in the matter of providing allotments or workmen's dwellings. Further, under the Act of 1905, now repealed, the Ministry of Health could, on the application of a County Council, appoint for a county or any part a "central body," with subordinate "distress committees," to put in force the scheme of the Act.

Allotments and cottages.

Unemployed Workmen Act.

(7) *Records.*—The county council is a great recording body for various purposes. It has taken over the functions formerly belonging to the Quarter Sessions in respect of the registration of the rules of scientific societies,[1] the particulars of charitable gifts, and of places for religious worship ;[2] and it confirms and records the rules of loan societies.[3] Moreover, it is now the polling and registration authority for the county in parliamentary elections.

Scientific societies.

Charitable gifts.

Places of worship.

Loan societies.

(8) *Public amusements.*—The granting of music and dancing licences, and of licences for race-courses, is now vested in the county council.

Music halls.

Race-courses.

(9) *Trade.*—The county council is the local authority for the enforcement of the statutes which aim at ensuring the uniformity of weights and measures throughout the kingdom ; and, by a recent statute, it is empowered to purchase the peculiar 'franchise' or privilege claimed within its county by any other person or body in respect of examining, testing, and regulating any weights or measures.

Weights and measures.

(10) *Supervision of other local authorities.*—This is a very important branch of the county council's jurisdiction, which recent legislation has made some-

[1] By an Act of the year 1843, learned societies whose rules have been duly certified to the clerk of the peace for their county, are exempt from payment of rates.

[2] By various statutes of the end of the 18th and the beginning of the 19th century, dissenters who desired protection for their places of worship were required to register them with, and get them certified by, Quarter Sessions. But they have now the option of transmitting particulars to the Registrar General.

[3] By the Loan Societies Act, 1840, the rules of a loan society must be transmitted by the certifying barrister to the clerk of the peace to be laid before Quarter Sessions.

New boroughs.

Boundaries.

Wards.

what prominent. The Local Government Act of 1888 gave the county council a substantial voice in the constitution of any new borough within its county, in the alteration of district and parish boundaries, in the division of urban districts into wards, and in the conversion of rural into urban districts. The Local Government Act of 1894 went much further. Under the provisions of that statute, the county council fixes the number of members of the parish councils within its county, decides whether certain small parishes shall or shall not have councils, lends money to the parish council or authorises it to borrow money elsewhere, hears complaints of the parish council against the district council, divides parishes into wards, is the general boundary authority in disputed questions within the county, and, broadly speaking, had to do its best to bring the somewhat complicated scheme of the Local Government Act of 1894 into working order.

Parish councils.

The Local Government Act of 1929 carries this policy even further, and provides for an early review by the county council, after conference with the district authorities, of the circumstances of all the districts within its county, with a view to alteration or definition of boundaries, union of parishes and districts, transfer of part of one parish or district to another, conversion of rural into urban districts and *vice versâ*, and formation of new parishes or districts. Proposals for any of these purposes may be made by the county council to the Minister of Health, who, after hearing any objections, may by Order give effect to the proposals, with or without modifications. Subsequent periodical reviews are to be held at intervals of not less than ten years.

Finally, after the review of circumstances above described, the county council is to review, before the year 1933, the electoral divisions (presumably the local government divisions) in its county, with

a view to alteration of boundaries or of the number of county councillors and divisions therein, and to report to the Secretary of State, who may make an Order accordingly, which is to be laid before Parliament as soon as may be after it is made.

(11) *Finance.*—But perhaps the most important duties of the county council are, after all, those connected with finance. For its financial powers are not merely those which are given to all public bodies, to enable them to fulfil their primary duties; the county council is a financial authority even for matters with which it is not immediately or exclusively concerned. Not only has it to find money for its own proper wants, the payment of its own officials, and the performance of its own special work; but it has to provide for the wants of judicial authorities, of assizes and Quarter Sessions, Justices' clerks, coroners, police, and petty sessions, for Poor Law purposes, and even for some officials of the central government.

To enable it to fulfil these functions, in the county council is vested all (or nearly all) the property belonging to the county, the power to borrow money for county purposes, to examine and pass the accounts of all county officials, and to fix the fees which they may take; to appoint, remove, and determine the salaries of all county officials, except the clerk of the peace and the Justices' clerks. It must, at the beginning of every financial year,[1] consider an estimate or budget of probable income and liabilities for the current year, and must again consider the budget at the expiration of the first six months of the year. All its financial business is in the special charge of a **finance committee,** which it is bound "from time to time" to appoint; and no payment (except in pursuance of an Act of Parliament or an order of a competent court) can be made by the county treasurer without

Budget.

Finance Committee.

[1] The financial year of the county begins on the 1st April.

an order of the council signed by at least three members of the Finance Committee.

Sources of revenue.

The question naturally arises: Whence does the county council get the money for all these purposes? And we may say that, apart from its revenue from property, which may come in the form of rents, tolls, royalties, fees, and so on, and from such casual sources as penalties for breach of statutes and by-laws which it is entitled to enforce, the county council derives its revenue from *loans*, *contributions*, and *rates*. A word as to each of these.

(i.) *Loans.*—For any purpose of permanent utility within the scope of its duties, such as the consolidation of existing debts, the purchase of land and buildings, and even for the assistance of emigration from its county, the county council may, with the sanction of the Ministry of Health, borrow money by way of loan, repayable, in most cases, by instalments extending over a period not longer than sixty years. At present, even the Ministry of Health cannot, without the express approval of Parliament, sanction any loan which will bring the total debt of a county above a tenth of the rateable value of the property within its area; but this limit will disappear on the coming into operation of the Local Government Act, 1929. The loan may be secured either by 'county stock' issued under the provisions of the Local Government Act of 1888, by debentures or annuity certificates under the Local Loans Acts (which prescribe general rules for the management of loans to local authorities), or by mortgage under the provisions of the Public Health Act. But every loan must be repaid by means of equal yearly or half-yearly instalments, or by means of a sinking fund.

County stock.

Debentures and certificates.

Mortgage.

Instalments.

Sinking fund.

(ii.) *Contributions.*—In the matter of grants to county councils from central funds, a radical alteration is made by the Local Government Act of 1929. When that Act takes effect, the former grants out of the produce of the Local Taxation Account, *i.e.*, the fund produced by the collection by county councils of certain taxes payable to

the central government, will cease ; as will various grants for modern health services, and also the existing grants from the Road Fund. In lieu thereof, there will be paid annually to county councils a contribution to local government expenses, to be called the **General Exchequer Contribution,** provided by Parliament. This contribution will be payable for fixed periods of years, known as ' fixed grant periods,' which, beginning at two, will be gradually increased to five years, so that the county councils may be able to calculate their resources for some time ahead.

The methods prescribed by the Act for the calculation and apportionment of the General Exchequer Contributions are extremely technical ; and no detailed description of them can here be attempted. It can only be said, that they are intended to cover the following principal items, viz. (1) the losses to local government funds caused by the ' derating ' clauses of the Rating (Apportionment) Act, 1928, and the Act of 1929, (2) the losses on account of grants made by the counties to the smaller local government units, (3) an amount fixed by Parliament (beginning at £5,000,000) for each ' fixed grant period,' and (4) the existing road grants, together with a substantial addition, to be determined by Parliament for each ' fixed grant period.'

Ante, p. 91.

But the whole of these General Exchequer Contributions does not come to the county councils ; for, by the provisions of the Local Government Act of 1929, the district councils are entitled to a share of it, calculated upon a population basis, with a special addition for losses on rates and for maternity and child welfare services undertaken by the district councils. It was evidently foreseen by the framers of the Act, that this apportionment for district councils might very seriously reduce the grants to the county councils ; for provision is made for supplementing the General Exchequer Contribution by moneys specially voted by Parliament.

As has been previously suggested, one of the most important results of subventions by the central govern-

Ante, p. 100.

ment to local funds is, that the practice enables the central government to enforce upon the local authorities conditions as to efficiency and economy. This policy is openly proclaimed in the Local Government Act of 1929, which authorises the Minister of Health to reduce the Exchequer grant payable in any year, if he is satisfied that the health functions of the council receiving it have not been performed in a reasonably efficient and progressive way, whereby the welfare of the inhabitants in its area has been endangered, or that the expenditure of the council has been excessive and unreasonable, or if the Minister of Transport certifies that the council has failed to maintain its roads in a satisfactory condition. Subject, however, to the provisions of the Act, the Exchequer grants to the county councils are applicable to general county purposes.

(iii.) *Rates.*—This appears to be the one matter in which recent legislation has curtailed the powers of county councils. Until recently, the county councils were rating authorities, levying their own rates by precepts addressed to the Guardians of the Unions, or, in default, to the parish overseers. Now, as we have seen, the district councils are the sole rating authorities; and the county councils have to address their precepts to them. But the Rating and Valuation Act of 1925 contains a provision to the effect that every county council must appoint a **county valuation committee,** consisting of members of itself and a representative of the committee of each assessment area within the county, in order to promote uniformity in valuation and to assist rating authorities and assessment committees in the performance of their valuation functions. There is also to be a Central Valuation Committee, constituted by the Minister of Health, representative of rating authorities, county valuation committees, and assessment committees, for the whole country, to report to the Minister on the operation of the Rating Act, and to make representations with a view to promote uniformity in valuation for rating purposes.

Ante, p. 89.

See *ante*, p. 90.

The accounts of every county council are made up and published at the close of each financial year ; and any ratepayer may inspect and verify them. They are then audited at the expense of the county, by a district auditor appointed by the Ministry of Health.

Finally, it is necessary to say a few words respecting the machinery by which a county council effects the objects of its existence. This machinery may be considered under the two heads of *by-laws* and *officials*.

By-laws.—A county council has, in addition to its power to make *by-laws* for the suppression of nuisances not otherwise summarily punishable, a general power of legislation " for the good rule and government " of its county. By-laws made under this power must observe the rules followed by a municipal council in making by-laws for its borough ; that is to say, they must be passed by a meeting consisting of at least two-thirds of the members of council, they must be published for at least forty days before coming into operation, and all by-laws (except those made for the suppression of nuisances under the Public Health Act [1]) must be submitted to a Secretary of State before they become legally valid. Offences against a county by-law are punishable on summary conviction. But no by-law may appoint a penalty exceeding £5 for any one offence ; and no county by-law has any force within a municipal borough.

Officials.—Every county council *must* have (in addition to its chairman, who is a constituent part of the council) a clerk, a treasurer, and a medical officer of health, as well as certain minor officials, and it may (and always does) have many other officials. The Clerk of the Council is the same person as the Clerk of the Peace for the judicial county,[2] who is appointed by the Standing Joint Committee ; but he does not necessarily hold the two offices on the same tenure. And the

Clerk. Treasurer. Medical Officer.

[1] These require the approval of the Minister of Health.

[2] This rule does not apply to the administrative county of London.

Treasurer, through whom alone payments out of the county fund can be made, is specially appointed by the council, apparently on such terms as may be agreed between them. The special duties of the county council with regard to the status of medical officers of health under the new legislation have been previously noticed. But the council may also appoint public analysts, surveyors, auditors, and such other officials as it may deem necessary ; and, although the Local Government Act of 1888 made provision for the transfer to the county council of existing officers of the county, and for the maintenance of existing claims, in subsequent appointments the Council has had an entirely free hand. It may be noted that no paid official in the permanent employment of a county council, who is required to devote his whole time to his county duties, is eligible as a member of Parliament.

CHAPTER X

THE STANDING [1] JOINT COMMITTEE

THE Standing Joint Committee of the Quarter Sessions and the county council of a county is a statutory body created by the Local Government Act of 1888, for the purpose of dealing with matters which are shared by Quarter Sessions and the county council. These matters include the appointment and regulation of the duties of the Clerk of the Peace, the control (but not the appointment) of the Justices' clerks for the Petty Sessional Divisions within the county, and the sharing of buildings which both Justices and council require to use. But its chief and most important function is the control and management of the **county police.**

Clerk of the Peace.

Justices' Clerks.

Buildings.

The Joint Committee is a body consisting of an equal number of county Justices and members of the county council appointed by Quarter Sessions and county council respectively. The precise numbers are agreed between Quarter Sessions and the council, or, failing agreement, are fixed by a Secretary of State. There is, apparently, no statutory rule as to the term of office of a Joint Committee ; but, as a county council only lasts for three years, it is presumed that its portion of members at least will require to be triennially appointed.

Constitution of the Joint Committee.

It was not until the middle of the last century that England finally gave up her cherished theory that the

Police.

[1] This adjective is (doubtless) inserted by the Act to distinguish between the joint committee of the Quarter Sessions and the County Council, and the joint committees which may from time to time be appointed by the councils of neighbouring counties.

parish constable was the normal and adequate guardian of law and order throughout the realm. Even so late as the year 1833, a comprehensive attempt was made to revive the decaying system of parish constables. But the attempt was a failure; and, in the year 1856, the legislature at last faced the problem of a new and uniform police system for the whole kingdom, with the exception of the metropolitan area, which was already specially provided for. The new scheme is to be found in the County and Borough Police Act, 1856, a statute which, in spite of alterations, still continues to be the ruling authority on the subject. There were originally two great difficulties in the way of an uniform scheme—the expense, and the special privileges of certain 'franchises' or 'liberties,'[1] which claimed the right to maintain their own police. The latter difficulty had been already partly got rid of by an earlier statute, the County Police Act of 1839; but that Act had been only permissive in its operation, while the new one was to be compulsory and universal. The difficulty of expense was met by a promise of Treasury contributions towards the cost of maintaining those county and borough forces which should be kept in a due state of efficiency. This plan has since been continued; and we may say now that, in addition to the central police Superannuation Fund, established in the year 1890, the Treasury pays (through the county councils) half the cost of the pay and clothing of the efficiently kept county and borough police forces.

Parish constables.

County and Borough police.

Franchises.

Police areas.

The scheme of the Act of 1856 was to establish a separate police force in every county and in every borough having a certain population. Leaving the borough force for future consideration, we may here sketch in outline the constitution of a county force.

[1] The terms 'franchise' and 'liberty,' originally applied to the peculiar privileges or exemptions possessed by a certain locality, have long since become equally applicable to the localities in which they are exercised. The change has many parallels in the English language.

The police of a county is under the general control of the Standing Joint Committee of Quarter Sessions and the county council. This committee, with the sanction of a Secretary of State, increases or diminishes the numbers of the county force, divides the county into 'police districts,' and assigns the proper number of constables to each, appoints the Chief Constable for the county, and provides the necessary buildings for the discharge of police duties. The rules as to the clothing, pay, and accoutrements of the police are, with a view to uniformity, prescribed by the Secretary of State; but the carrying out of these rules is in the hands of the Standing Joint Committee. The Chief Constable of the county, with the approval of Petty Sessions, appoints the specified number of constables in each police district,[1] with a Superintendent at the head of each, and has even considerable powers of dismissal and punishment. But in these and most other matters, he is subject to the general control of the Standing Joint Committee, which may, with the approval of the Secretary of State, organise and distribute the county force in such manner as to it may seem fit, providing for gradations of rank, pay, allowances, promotions, and other details.

County police.

Police districts.

Chief Constable.

Superintendents.

But it is here very necessary to observe that, although the general administration of the county force has been transferred to the Standing Joint Committee, the control and authority of Quarter Sessions, and even of single Justices, over individual constables has been specially retained by the County Councils Act. It would be impossible for daily business to be done, if a magistrate had invariably to appeal to the Standing Joint Committee before obtaining the services of a single constable. And so it is expressly provided by the Act of 1888, that the Quarter Sessions and even the county council may exercise, concurrently with the Standing Joint Com-

Quarter Sessions and Justices.

[1] Although there does not seem to be any direct statutory provision on the subject, the lines of the police district follow those of the Petty Sessional Division.

mittee, the power of ordering constables to perform "such duties in connection with the police," in addition to their ordinary duties, as they may think fit.[1] Moreover, it is also expressly laid down, that the change is not in any way to affect the primary powers and duties of the Justice as conservator of the peace, nor the obligation of constables to obey his lawful orders given in that capacity. And it is presumed, that the statutory duty formerly laid upon the Chief Constable to attend every Quarter Sessions court of his county, and upon the District Superintendent to attend every Petty Sessional court in his district, is not in any way abolished by the Act; though probably the Standing Joint Committee will prescribe the manner in which it is to be exercised.

Cost of maintenance of police.

As we have said, one-half of the cost of maintaining the county police force is at present paid by the Treasury through the medium of the Exchequer Contribution Account of the county council, provided the efficiency of the force is maintained. Inasmuch as the police grant is not included in the list of 'discontinued grants' for which are to be substituted the General Exchequer Contributions under the Local Government Act of 1929, it is presumed that, after the Act takes effect, the county police grants will be continued on existing lines.

See *ante*, p. 147.

Pension fund.

Elaborate statutes of the years 1921 and 1926 have now provided a scheme by which every police constable who serves a specified time or is incapacitated by accident or sickness, is entitled to a pension or superannuation allowance as a matter of right; and the source from which such pension is to come is the 'pension fund' directed to be established in every area for which a police force exists. This pension fund is made up partly of deductions from pay, partly of fines imposed on the constables of the force for neglect of duty, partly of

[1] This is a vague power, and might, if exercised by all three bodies concurrently, lead to some friction. The Act of 1888 refers to the Act of 1856; but the latter is equally vague.

payments made by other authorities for extra services rendered, and partly by direct contributions from the Treasury. If at any time a pension fund is unable to meet the existing claims upon it, the deficiency must be made good by contributions from the 'police fund' of the same authority, *i.e.*, from the fund raised for the maintenance of the existing force. This police fund, as we have seen, is partly provided (in the case of efficient forces) by Treasury subvention; the remainder was, until recently, raised by the imposition of a 'police rate,' that is to say, a special rate for police purposes assessed by the county council upon each police district within its county, in proportion to the number of constables employed in it.[1] Now that the county council has ceased to be a rating authority, the amount required by it from local sources in respect of its police will be included in the precepts to the rating authorities within its area.

Police fund.

Police rate.

See *ante*, p. 93.

Finally, a word as to the position of the individual policeman. But we must first point out that the word 'policeman' is, if not actually unknown to, at least very rarely used by English law. The law knows of 'police forces,' 'police regulations,' 'police authorities,' and so on; and the word 'police' is used to qualify those persons or institutions who or which are managed by the legislation we have recently been discussing, to distinguish them from the older institution of the parish constabulary. Our modern policeman is technically known to the law as a 'constable,' more properly, as a 'police constable,' which qualification distinguishes him from the 'parish constable' or 'paid constable' appointed under the Act of 1872, from the 'special constable' temporarily appointed by two Justices in apprehension of a riot under the Special Constables Act of 1831, and from the 'special constables' appointed annually in every municipal borough for use in case the ordinary force prove insufficient.

The constable.

See *ante*, p. 30.

See *ante*, p. 30.

See *post*, p. 181.

[1] There were, however, some general police expenses to which the whole county contributed indiscriminately.

Constable's special disabilities.

The position of police constable involves some considerable disabilities, as well as substantial privileges. The constable may not engage in any private occupation; and, although his former incapacity to vote at parliamentary and municipal elections has been removed, he may not canvass at either parliamentary or municipal elections within his county or borough. He is subject to special punishments which cannot be applied to the ordinary citizen. On the other hand, he is absolutely protected from legal liability when acting upon a Justice's warrant,[1] even though the warrant turn out to be defective; he is exempted from service on juries; assaults made upon him in the execution of his duty are punished with special severity; he is entitled to arrest any one without warrant on suspicion of committing a felony, and, if he act *bonâ fide*, is not liable for damages, even though it turn out that no felony was, in fact, committed; and a superintendent or inspector of police has almost magisterial authority in being entitled to release on bail a person charged with an offence punishable upon summary conviction who cannot at once be brought before the Justices. Generally speaking, we may say that the ordinary police constable looks first for orders to his superior officer; but that he is bound to obey the warrant of any Justice of the Peace who professes to be acting in the scope of his duty.

Privileges.

'Special Constables.'

Finally, it would seem that the 'special constables' who have been appointed from time to time, on occasions of emergency, to supplement the ordinary county police, are still appointed, not by the Standing Joint Committee, but by 'any two Justices,' under the powers of an Act of 1831. But additional powers to require these appointments to be made, and to control the special constables appointed, were conferred on the central government at the outbreak of the war, by the Special Constables Act, 1914. And this Act has now, in effect, been made permanent by the Special Constables Act, 1923.

[1] The constable must observe certain rules as to showing the warrant.

GROUP D

THE BOROUGH

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CHAPTER XI

THE BOROUGH—PARLIAMENTARY AND MUNICIPAL

ALTHOUGH it seems probable that the body of traditional usage which the earliest Teutonic invaders of Britain brought with them made no special provision for large centres of population, although the roaming Saxon hated the confinements of what we now call town-life, yet it is hardly possible to find authentic records of a time when there was in England nothing in the way of settlement beyond the typical agricultural village. Long before the Norman conquest, we get traces of that *burh* from which both the character and the name of the modern borough are derived. There is a curious and suggestive similarity between the original names of the village and the borough; for while the *tun*, the original village, was, as we have seen, the hedged or stockaded place, the *burh* was the strong or fortified place. And it is not a little curious that, just about the time when the country districts became fairly peaceful and safe under the strong hand of the Tudor monarchy, the name *town* should pass, in common language, from the village to the borough. With us, 'town' is opposed to 'village'; so late as the fifteenth century the town was the village.

Town and burh.

When we ask ourselves the origin of the historic centres of population in England, we can give, in many cases, no definite answer, certainly no rule of general application. Artizan and merchant life may have lingered on in the old Roman cities, such as London, York, and Chester, and been gradually reinforced by

Origin of English towns.

Roman cities.

Markets.

Castles.

Shrines.

Burgesses.

in-drift from the country. Some German scholars bid us find the earliest symbol of citizen life in the market cross; but although, doubtless, facilities for the exchange of goods often led to the growth of a borough, many other causes were at work. Small groups of houses grew up round the castle of a powerful official with a reputation for clemency, or round some famous shrine which extended the peace of the church to those who lived under its shadow.[1] And thus, ere Domesday Book was drawn up, there had established itself in the land a special class of burgesses (*burgenses*), who lived in what we should now call towns, usually under the protection of some great noble, spiritual or secular, who allowed them special privileges in return for pecuniary assistance.

Servile origin of boroughs.

But one very remarkable feature is to be found in all these cases. There was always a flavour of *serfdom* attaching to the burgess, however wealthy. Whether it was that the earliest burgesses had really commended themselves as serfs to the lord or religious house under whose ægis they had come to dwell, or whether it was that the peculiar privilege, claimed by many boroughs, of freeing from his lord's claims the rustic who dwelt unmolested in them for a year and a day, had branded the borough as a refuge for escaped serfs, it is certain that the theory prevailed, that every burgess had something servile about his position, and that practical consequences were drawn from this theory. Not only did the borough-member long occupy a position far inferior to that of the knight of the shire in Parliament, when Parliament had come to be; not only was the cringing burgess held up to the mockery of the stout yeoman on the Elizabethan stage. But, in earlier days, the servile taint which clung around burghership had subjected the boroughs to the bitter tax of *tallage*; and, in the struggle

[1] Those who wish to realise how a town grew up round a shrine in the Middle Ages should visit the chapel of St. Anne of Auray, in Brittany. A few years ago it was a solitary landmark, round which, at pilgrimage times, a few booths were temporarily erected. Now the booths have become shops, and the pathways streets of houses.

against tallage, lies the critical point in the earlier history of boroughs.

Tallage. Tallage was a tax peculiarly hateful on two grounds. First, that payment of it involved the stigma of serfdom. Second, that there were no limits to the number of times which it might be levied, nor to the amount which might be claimed under it. The lord who tallaged "did what he would." In theory, he was only taking from his serfs a part of those chattels, the whole of which legally belonged to him, but of which his clemency allowed his serfs to retain the use. No doubt the theory was glaringly untrue in fact; but, long after the 'aids' and 'scutages' to which the free man was subject had been strictly limited by the Great Charter and by other statute law, the burgess remained subject to the indefinite tallage.

Naturally the burgess revolted against the hateful imposition, and set himself to remove it. His first step was to buy off the liability to indefinite taxation by a promise of a fixed annual sum (*firma burgi*) in its stead. There was at first probably no definite body of persons responsible to the lord for this annual render; but the lord was quite secure, for, if the sum were not paid, his bailiff simply harried the burgesses under the claim of tallage. In this way, several boroughs had won the first step towards freedom, before Domesday. Chester paid ten marks of silver (to King or bishop); Lincoln one hundred pounds of silver by tale, half to the King and half to the earl; Oxford sixty pounds. But there is no hint [1] as to who actually paid the sums, or how they were collected inside the walls. Some one found the money, or King's sheriff and earl's bailiff would know the reason why.

The *firma burgi*.

So the process went on for some two centuries. But meanwhile, a most formidable theory made its appearance. It often happened that, owing to deaths or failure of a feudal line, or perhaps because in reality the

[1] Except the vague statement that certain houses in the borough were 'tax-paying' (*geldantes*).

Boroughs in the King's hand.

borough had grown up without special protection, the burgesses of a particular place had in fact no feudal superior who claimed tallage. It might have been thought that their position was peculiarly fortunate. But it must be remembered that Norman William had firmly established the theory that the land which had a private lord had also an overlord in the King, while the land which had no private lord was directly "in the King's hand." So ran the feudal maxim: 'No lord, no land.' And where no private lord claimed to tallage a borough, that borough could be tallaged by the King.

For a long time the only way out of the difficulty was for these boroughs to do as the private boroughs did, viz., to buy off the liability to tallage by agreeing to pay a fixed annual sum. Very often such a bargain was solemnly recorded in a *charter*, *i.e.*, simply, a parchment scroll, in which, in return for the annual payment, the King or lord granted to the borough freedom from all other claims, and the enjoyment of certain special privileges carefully specified in the charter. Thus the whole land gradually became dotted over with chartered boroughs, each relying upon its own special charter. Thus, too, the history of municipal privileges acquired that peculiarly anomalous character which it retained down to the great reform of 1835. But the boroughs which received no charters (and, it is to be feared, sometimes those which did) were still in evil plight.

Charters.

The parliament.

At last brighter days came. A national parliament was established, and, from the very first, set itself steadily to acquire the sole right of taxation throughout the land. That any authority should now attempt to tax Englishmen without the approval of Parliament is so improbable, that we are apt to forget the slowness and the bitterness of the struggle which brought about this result. Though the Great Charter laid down the rule that the free man should not be taxed save by the consent of a "common council of the realm," the wording of the clause was narrow, and the royal officials found many a loophole in it. Still, by the end of the

thirteenth century, Parliament had won the battle as regards freemen's taxes, only to find its flank turned by a daring use of the claim to tallage. For, if the King could fill his exchequer by tallaging the boroughs, where was the Parliament's dream of complete control of taxation, and pressure upon the King by means thereof?

Fight over tallage.

So once again the issue was joined. The Kings, fighting inch by inch, fell stubbornly back; and, at last, before the fourteenth century had run out, the victory was gained. Tallage without consent of Parliament was declared illegal; and the theory of the serfdom of burgesses had gone for ever.

The corporation.

But this was, after all, only a negative position. The borough was exempt from tallage, and, probably, from feudal jurisdiction; but it was too vague a body to have much positive power—to be able to govern its own members. The earliest charters are very general in their terms, when they attempt to describe the persons to whom their privileges are granted. The King grants privileges to "my citizens of London," to "my barons [1] of the Cinque Ports," to "my burgesses of Nottingham," and so on. There seems to be no definite body capable of acting as trustee of the town's privileges, no **corporation,** as we should say. The townsmen were not *organised*. It is, in fact, one of the very hardest things to say what constituted burghership in the eleventh or twelfth century.

But, although there was no one organism which summed up and expressed the whole life of the borough, there were often germs which might well form the nucleus of such an organism. Even where the borough had grown up out of a single township, there would be the old town-moot of the original settlers or their descendants, who still held the ancient homesteads of the town. Around them, in more recently built dwellings, jealously excluded, no doubt, from the sacred circle of ancient householders, was the constantly increasing group of new-comers, whom hopes of profit had attracted

Town-moot.

[1] The word 'baron' originally meant simply 'liege man.'

towards the borough. In these cases, mere ownership of one of the old tenements, without proof of descent, often gave to the owner and his descendants a right to be considered members of the privileged class. Where the borough was originally a group of townships, it seems, in many cases, to have organised itself spontaneously on the model of a *hundred*, with a representative moot and a leet jury of the twelve senior landowners. Here again would be opportunities for further development, as the town court and the jury acquired more and more distinctness. Most important of all, the borough may have originally owed its importance to its position on one of the great trading routes. And then, in all probability, there would be a *gild* or *hanse* of merchants, an association for the purposes of commerce, existing by licence of the King; and this gild would have its elder brother or *alderman*, as well as its ordinary members.

Leet jury.

Gild.

Out of these scanty materials there gradually grew up, by a process so silent that we cannot trace its definite lines, our familiar organisation of *mayor*, *aldermen*, and *burgesses*—not necessarily as the universal type of borough, but as the orthodox type, to which others tended to conform. The *burgesses* included all the privileged dwellers in the borough, sometimes acting in a primary body, as in the old township moot, more often through an elective council, like the courts of hundred and shire. The *aldermen* were the senior members of the gild or gilds, sometimes chosen by the burgesses at large, sometimes only by the gild brethren, who, however, must often have been identical with the burgesses. The *mayor* (*major*), though his name probably comes from Latin-speaking countries, is either the lord's bailiff or reeve, or else the elected foreman of the leet jury—the *major et jurati*. Between these two alternatives the distinction is, of course, vast; it implies all the difference between the formerly government-appointed *maire* of the French *commune*,[1] and the elective

Mayor, aldermen, and burgesses.

[1] Since 1884, the elective system has also been in force in France.

mayor of the modern English town. Gradually England declared in favour of the present model. London, which at William's death had only a 'portreeve' (probably appointed by the bishop), wrung from John Lackland the right she has ever since enjoyed of electing her own mayor. But London was, of course, far in advance of other boroughs; and we must probably allow at least another hundred years before the leading type of mayor, aldermen, and burgesses became, not universal, but even general. The fact that Edward I., in organising his Parliament, gave separate representation to the boroughs, seems to prove the importance which the latter had acquired by the end of the thirteenth century; though there is a certain very plausible theory which denies that, in the original scheme of Parliament, it was ever intended to give separate representation to any but *royal* boroughs, *i.e.*, boroughs in the hand of the King.[1] On the other hand, the fact that the sheriff and not the mayor was made the returning officer in the parliamentary boroughs, goes far to shew that there was no well recognised type of borough constitution, even at the end of the thirteenth century.

London.

1295.

And, even after mayor, aldermen, and burgesses had made their appearance, there yet remained one most important step to be taken before the borough organisation could be considered complete. This was the recognition of the borough as a legal personality, a *corporation*, or, as the lawyers called it, *persona ficta*. Until this point was established, there would be endless difficulties about power to hold lands, power to make by-laws, power to use a seal, power to sue and be sued,—about those ordinary business acts which an individual

Legal personality of the borough.

[1] Certain it is that, for the first century of its existence, the borough representation in Parliament vacillates in a most mysterious way. In one year a borough will send members, in another not. Some historians are inclined to attribute this to purely casual circumstances, prosperity or otherwise of the borough in question. This is very unlike medieval notions. The position of the Scottish 'royal burghs' considerably strengthens the theory in the text.

can do without question. Suppose, for example, a dying citizen left part of his land "to the good town of X." Who would be legally entitled to enforce performance of the will? The existing burgesses? Suppose one of them died, what about his heirs? Again, according to legal theory, if land belongs to several persons jointly, none of them can commit trespass upon it. In this way a handful of citizens might appropriate the whole benefit of the gift. It was not until the existence of the juristic person, or **corporation,** comprising all the burgesses for the time being, and yet, in the eye of the law, different from all of them, not until this legal personality was recognised, that the position of the borough could be deemed really safe. And we cannot put this achievement much before the close of the fifteenth century.

Decay of municipal life.

Curiously enough, its realisation was almost immediately followed by a dark period in municipal history. The great opportunities for individual enterprise offered by the discoveries of the sixteenth century, and the expansion of trade consequent thereon, seem to have thrown the municipal offices into the hands of inferior men. The rich merchant found himself quite able to stand alone; he ceased to care much for the small affairs of his borough. Naturally, municipal politics tended to become timid and corrupt; and the tendency was accentuated by the new practice, adopted by the later Tudors, of manipulating the borough representation to check the growing independence of the House of Commons. Since the reign of Edward IV., it had become the practice to grant the right of sending members to Parliament in borough charters; and the Tudors shrank from forcibly cancelling these chartered rights. But it was easy, in the then state of constitutional law, for the Crown to create new borough constituencies out of little towns in which royal influence could easily intimidate or buy over the municipal officials, who would practically control the elections. It is to the saintly Edward and the glorious Elizabeth that we

Rotten boroughs.

owe our first wholesale creation of 'rotten boroughs'; and James and Charles followed suit.

Close corporations.

But there was even worse to come. For, after the heroic attempt and failure of the Long Parliament and Cromwell to purge the parliamentary constituencies, the Restoration converted the municipal boroughs not merely into hot-beds of political corruption, but into elaborate engines for the extortion of money and the persecution of dissenters. By threats, by vexatious prosecutions, by the forfeiture of older charters and the grant of new municipal constitutions on a close oligarchical basis, the later Stuarts made of the whole borough system an offence which stank in the nostrils of whoever was honest in England, and which lingered on, in deserved infamy, till a reformed Parliament resolved to cleanse the Augean stable.

The Commission of 1833.

Then came the great Royal Commission of 1833, a thorough and systematic enquiry into the circumstances of the 246 towns which claimed to exercise municipal privileges. The condemnation pronounced by the Commissioners, after two years of patient investigation, is complete and sweeping. Inefficiency, anomaly, corruption were everywhere prevalent. As to the first point, the Commissioners say calmly: "It has become customary not to rely on the Municipal Corporations for exercising the powers incident to good municipal government. . . . They have the nominal government of the town; but the efficient duties, and the responsibility, have passed to other hands." [1] Upon the second point, the truth of the Commissioners' accusation may be illustrated by the fact that there were, in one borough and another, no less than twenty-two different ways by which admission to municipal privileges could be acquired, eleven different ways of appointing a Recorder, thirteen of appointing a Town Clerk, and at least seven different kinds of governing bodies. As to the last charge, we may simply refer to the facts that in a large number of cases vacancies in the privileged bodies were

Inefficiency.

Anomaly.

Corruption.

[1] Report of 1835, p. 17.

filled, not by open election, but by co-optation by the surviving members, and that, of 246 corporations only twenty-eight were in the habit of publishing accounts.

The statute of 1835.

The great Municipal Reform Act of 1835, which followed upon the Report of the Commission, though it affirmed the general principle of an uniform system of municipal corporations, only included in its scope 178 of the boroughs reported upon, and left the rest for further treatment. Many of these have been since brought within the general plan; and, after a second Commission had reported in 1876, a statute of the year 1883 practically put an end to all municipal corporations not falling within the provisions of the general scheme formulated by the new Act of the preceding session. We may, therefore, now say that, virtually speaking, all the 339 municipal boroughs of England and Wales are regulated by the provisions of the Municipal Corporations Act of 1882 and its amendments (for of course the Act has been amended). The great exception is the City of London, which is still governed by its ancient constitution.

Commission of 1876. Statute of 1883.

Statute of 1882.

Severance of parliamentary and municipal functions.

One of the most important effects of the legislation of the early nineteenth century was to draw a complete line of severance between parliamentary and municipal functions in the boroughs. Not only were the boundaries of the borough for parliamentary and municipal purposes often made entirely different, but all connection between the parliamentary and the municipal franchise was taken away. The mere fact of burghership no longer gave even a *primâ facie* claim to the parliamentary franchise. Though, doubtless, in the vast majority of cases, the man who was a parliamentary voter for a borough was also a burgess, he claimed the two rights by totally different titles. And the converse did not by any means hold. This distinction has since tended to disappear; but we have still to deal with two totally different kinds of borough, the parliamentary and the municipal. With regard to the first, only a few words will be necessary; for it belongs rather to central than to local government.

A.—*The Parliamentary Borough.*

The parliamentary borough is now simply a definitely prescribed area for the registration of parliamentary electors and the election of members of the House of Commons. Of these areas there appear to be at present 135 (including the City of London).[1] Many of them, no doubt, coincide in name, and not a few also in area, with municipal boroughs ; but, for all that, the parliamentary and the municipal borough are certainly distinct in idea ; the former being a mere electoral area, while the latter is a self-governing unit. And, in many cases, there is no identity at all. In London the metropolitan boroughs are now, seemingly, identical in all cases with their parliamentary namesakes ; in the country, the smaller municipal boroughs have ceased to be parliamentary, while the parliamentary boroughs of Accrington, Morpeth, Newcastle-under-Lyme, and Richmond, though they assume the names, yet have not the areas of their municipal namesakes. If we wish to ascertain the boundaries of a Parliamentary borough, we must dig them out of Schedule IX. of the Representation of the People Act, 1918, which will, in many cases, only refer us to municipal sources. There is no general authority on the subject. If we wish to know the boundaries of a municipal borough, we have merely to look at its charter, and the subsequent Orders (if any) altering its original area.

No identity of area or name with municipal boroughs.

A parliamentary borough has, however, certain resemblances to, as well as differences from, a municipal borough. If it returns more than one member it is nearly always split up into ' single member ' divisions, which are a good deal like municipal wards, except that the latter generally have three members instead of one. Still more important, the preparation of the lists of voters, both for parliamentary and for municipal elections, goes on concurrently in places which are within the limits both of parliamentary and municipal boroughs ; and, by a curious freak of history, the parlia-

Electoral divisions and municipal wards.

Polling.

[1] Representation of the People Act, 1918, Sched. IX.

Franchise.

mentary and municipal franchises, so violently separated in 1832, have since somewhat tended once more to similarity. Finally, the mayor, who is primarily a municipal official, is, generally speaking, returning officer for any parliamentary election which takes place within the limits of his municipal borough, if these are coterminous with the parliamentary area; except in counties of cities and towns where there is a sheriff.

Returning officer.

Post, p. 194.

B.—*The Municipal Borough.*

All municipal boroughs existing at the passing of the Municipal Corporations Act, 1882, which were then subject to the provisions of the Act of 1835, are now governed by the provisions of the Act of 1882; all boroughs since incorporated have been put on the same footing; all boroughs which, though existing in 1882, were not subject to the general law, have, as we have seen, since been deprived of their municipal character. We may say, therefore, that the Municipal Corporations Act of 1882 virtually lays down the law on the subject of municipal corporations generally.[1] Indeed, the official definition of a municipal borough is now "any place for the time being subject to the Municipal Corporations Act, 1882"; and if any unincorporated town wishes to get itself made into a borough, it must petition His Majesty for a charter of incorporation under that Act, first giving notice to the county council of its county, and to the Ministry of Health. After due time has elapsed, and upon approval of the petition by a committee of the Privy Council, His Majesty may grant a charter of incorporation, which may prescribe the

Incorporation.

[1] There appears to be a somewhat unfortunate tendency in official circles to confine the term 'municipal borough' to those boroughs which do not rank as 'county boroughs' under the Local Government Act, 1888. This tendency would suggest that the 'county borough' is not a municipal corporation governed by the Municipal Corporations Act, 1882. Surely *all* boroughs are 'municipal boroughs'; while some are also 'county boroughs' and others 'non-county boroughs.'

See *post*, p. 194.

boundaries of the borough [1] and the wards (if any), and fix the number of councillors to be elected for borough and wards. But, with the exception of making provision for temporary arrangements, the charter can do no more ; it merely extends to the town the provisions of the Municipal Corporations Acts.

In every municipal borough, the **corporation** or legal personality of the borough consists of mayor, aldermen, and burgesses.[2] But all powers belonging to the corporation may be exercised by the **council** of the borough, which, curiously enough, may contain persons who are not burgesses. We shall therefore have to speak of mayor, aldermen, councillors, and burgesses. Taking these in order of dignity, and beginning with the lowest rank, we take first the

(1) **Burgess,** who may be defined as any person who, being duly qualified,[3] is registered on the burgess roll of the borough. As previously explained, the recent Representation of the People Acts, 1918 and 1928, have created a new and uniform local government franchise, which includes burgess qualification. Accordingly, any person who is, on the day when the register is made up, occupying land or premises in the borough, and has, for the six months preceding, occupied such land or premises, or (except in the case of county boroughs) any land or premises in the county, or is the husband or wife of, and residing with, any person so qualified,

Burgess qualification.

[1] The Act does not expressly say so ; but a power to fix the boundaries of wards implies a power to fix the boundaries of the borough.

[2] A certain complimentary distinction exists between the 'city' or the 'citizen,' and the 'borough' or the 'burgess'; and much historical learning has been expended in stating the etiquette of the point. For practical purposes there is no difference in English law, which knows little of 'citizens.' All are 'burgesses,' or, more strictly speaking, 'local government electors.' But it is convenient to use the historic title.

[3] An unqualified person who gets himself enrolled as a burgess may be entitled to vote as a burgess, or rather, it may be impossible to prevent him so voting. But, for all that, he is not a burgess.

in the qualifying premises, is entitled to be enrolled as a burgess, unless legally incapacitated.[1]

The burgesses form the primary body of the corporation ; but a burgess takes no direct share in the administration of borough affairs other than in the election of councillors and auditors, or in connection with Private Bills promoted by the council. Occasionally town meetings are held for the furtherance of public objects ; and a burgess has, *primâ facie*, a right to use any of the public buildings or conveniences provided by the council. But there is no direct provision, as in the case of parishes, for the participation of the primary body in the duties of administration.[2] The electoral duties of the burgess will appear when we speak of—

Municipal Council.

(2) **The Council,** which consists of a number of councillors fixed by the charter of incorporation, or by subsequent Order in Council or Act of Parliament, and distributed amongst the divisions or *wards* into which the borough is divided for electoral purposes, in the proportion of three councillors, or some multiple of three, to each ward. No person can be a councillor unless he is either (1) a burgess, or, (2) a person who is the owner of property held by freehold, leasehold, or some other tenure within the borough, or, being qualified to be enrolled as a burgess, has not, after being elected, ceased for six months to reside within the borough.[3] But no one who is an elective auditor or

Qualification of ordinary councillors.

Disqualifications.

[1] *e.g.*, by the Corrupt Practices Act of 1883, which disqualifies for certain periods all borough electors who have been found guilty of corrupt or illegal practice at a parliamentary election. A similar rule prevails in the case of municipal elections.

[2] Every burgess has, however, the right to *criticise* the administration of the council, and, if need be, to compel it to perform its legal duties and to abstain from illegal acts.

[3] This appears to be the effect of the 11th section of the Municipal Corporations Act, 1882, as modified by the Representation of the People Act, 1918 ; but as a specimen of puzzling draughtsmanship, the section may be commended to the study of those who believe in Parliamentary legislation. The section first declares that every councillor requires a property qualification, and then that he does not.

assessor of the borough, or who holds any paid office in the gift of the council (other than that of mayor or sheriff), or who is directly or indirectly interested in any contract with the council, no one who is a bankrupt, or who has been found guilty of corrupt practices at a parliamentary or municipal election, can occupy a seat on the council; and if a burgess ceases to reside for six months within the borough, he loses his qualification as councillor (unless otherwise qualified), even though his name remains on the burgess roll. Councillors hold their seats for three years; the senior third of the members for each ward (or for the whole borough in the case of a borough not divided into wards) retiring every 1st November. Any one who refuses corporate office is liable to a fine. Casual vacancies in the council, caused by death, refusal to accept office, disqualification, or retirement, are filled up in precisely the same way as ordinary vacancies, by the electors who, but for the vacancy, would be the constituents of the holder of the seat; but the person elected to fill a casual vacancy only holds office till the expiry of the term for which the original member was elected. The election of councillors proceeds by ballot; and each elector has as many votes as there are vacancies to be filled. But no elector may give more than one vote to one candidate; and no elector may vote in more than one ward.[1]

Councillors' term of office.

Office compulsory.

Casual vacancies.

Election by ballot.

(3) **The Aldermen,** one-third in number of the councillors, are elected by the latter from their own number, or from persons qualified to be of their number. The aldermen are elected for six years; but the senior half retire triennially. Aldermen are members of the council; but any seats which they occupied as councillors at the time of their election as aldermen are thereby vacated, and they can no longer vote in the election of aldermen. The election of aldermen takes place on the 9th November in the triennial year, at

Qualification.

Term of office of aldermen.

Election.

[1] A ward may be divided by the council into *polling districts*; but the elected councillors represent the whole ward, not any particular district.

the quarterly meeting of the council, and is conducted by open voting papers handed in to the chairman of the meeting. Each councillor may give as many votes as there are vacancies; but he may not give more than one vote to any candidate. An outgoing alderman may not vote in the first instance; but, if he happens to be chairman of the meeting, he has a casting vote in case of equality. According to the general rule in municipal elections, a retiring alderman, if otherwise qualified, is eligible for re-election.

Position of alderman.

The only special function performed by the aldermen as such appears to be that of acting as returning officers in ward elections. An alderman, however, is not elected for a ward, but for the whole borough, and must, therefore, as returning officer, take the ward assigned to him by the council. The aldermen are supposed to constitute the experienced or permanent section of the council; but, as the council itself is, by reason of the fact that its ordinary members only retire by thirds, to some extent a permanent body, the existence of a special section, virtually co-opted by elective councillors, hardly seems necessary. In social matters the alderman takes precedence of the ordinary councillor; but his legal qualifications and disqualifications are the same as those of the ordinary councillor.

(4) **The Mayor** is the chairman and president of the council, annually chosen by the council,[1] either from among its own members or from among persons qualified to be such. The mayor is a member of the council; and his acceptance of office does not vacate his ordinary seat. The qualifications and disqualifications of the ordinary councillor apply to him, except that, on the one hand, he may receive remuneration or allowance for the performance of his duties, and, on the other, two months' absence from the borough is sufficient to disqualify him for holding his office. He acts as president and chairman of all meetings of the council

[1] An outgoing alderman may not vote in the election of the mayor.

Mayor and ex-mayor.

at which he is present, he represents the borough on all official and ceremonial occasions, he is *ex officio* a Justice of the Peace for the borough, and, unless the borough is a 'county borough,' for the county in which it is situated, both during his year of office and that which succeeds it [1]; and, when engaged in the business of the borough, he takes precedence of all ordinary Justices, but not of a stipendiary magistrate. If the borough is not divided into wards, he also acts as returning officer at municipal elections. The mayor may appoint in writing, from among the aldermen or councillors, a deputy to act for him on any occasion at which he may be unable to be present.

Justices

The mayor, aldermen, and ordinary councillors constitute, as we have said, the council of the borough, the body through which alone the corporation of the borough is, as a general rule, capable of acting. But there is another group of office holders who are not all members nor officers of the council. These are the *auditors*.

(5) **The Auditors** of a borough, three in number, are annual officers, one appointed by the mayor from among the members of council, the other two elected by the whole of the electors of the borough acting together, from among those who are qualified to be, but are not actually, members of council.[2] It is the duty of the auditors to audit half-yearly the accounts of the borough Treasurer before they are submitted to the Ministry of Health.

We have now to consider, first, the duties which fall to the lot of a borough council, and, second, the machinery by which those duties are performed.

Functions of council.

But, with regard to the duties of a borough council, much of our work has already been done. For many of the most important municipal functions arise from the fact that almost every borough is (as we said) an

As sanitary authority.

[1] Unless, during the second year, he becomes disqualified to be mayor.

[2] Neither Town Clerk nor Treasurer is eligible as auditor.

urban sanitary district, and that its sanitary authority is the borough council. The borough council will therefore have all those powers and duties in the matters of drainage, gas and water supply, prevention of the spread of disease, registration of lodging-houses, provision of markets and public recreation grounds, and housing of the working classes, which, as we said, belong to every urban sanitary authority. It has also become a rating authority under the Rating and Valuation Act, 1925, as an urban district. Beyond this, every borough council is now entrusted with many of the powers contained in the Town Police Clauses Act of 1847, an Act which formerly only applied in places which had specially adopted it, but whose powers have now been largely conferred, by the terms of the Public Health Act, on every urban sanitary authority, though they are naturally of more importance in boroughs than in extra-municipal districts. These powers include the management and direction of public traffic, especially on occasions of public ceremonial, the prevention of fires, the oversight of places of public resort, the licensing and control of hackney carriages, and the regulation of public bathing. It is as urban sanitary authority, too, that a borough council adopts (after due preliminaries) the provisions of the Public Libraries Acts, 1892 to 1919, the Baths and Washhouses Acts, the Burial Acts, and other optional statutes, and distributes the higher education grant made by the county council. In fact, we may say that, whenever any statute or scheme has been passed or imposed for the benefit of the inhabitants of a borough, the borough council will be the authority to put the statute or scheme into operation and to enforce its provisions. In all boroughs with over 10,000 inhabitants this is now the case in regard to elementary education, which formerly, as we shall see, was managed by a separately elected School Board. But even then, if there was no School Board, the School Attendance Committee was appointed by the borough council.

Ante, p. 75.

As police authority.

Ante, p. 31.

Education.

This identity of the borough and urban district renders it here only necessary to speak about two very important branches of the council's duty,—its administration of the borough property, and its control of the borough police.

Property.—Generally speaking, all property which is destined for the general use and advantage of the inhabitants of a borough, unless it is specially vested in some other body or persons, or unless it is to be used for charitable purposes, is in the legal ownership of the corporation, and is administered by the council. And, where the burgesses of a borough, or some of them, were, in their corporate capacity, before the passing of the Municipal Corporations Act of 1835, trustees jointly with any other persons or bodies, and their continuance as trustees is not forbidden by the Act of 1835, or the later Act of 1882 (as, for example, in the case of charities), the power of appointing new trustees on the occurrence of vacancies will belong to the council. Furthermore, a municipal corporation, even where it has not otherwise power to hold land 'in mortmain,' [1] may buy five acres of land for public purposes without special permission; and any other land which it may require for public purposes it may buy with the approval of the Ministry of Health. But, unless authorised by Act of Parliament, it may not sell or mortgage its corporate land without the approval of the Ministry of Health; and its power to grant leases without a similar approval is restricted within very definite limits, to prevent the borough

Trust property.

Power to acquire land.

Loans.

[1] It is an anciently established rule of English law that no corporation (ecclesiastical or secular) may hold land without a permission from the Crown (called a 'licence in mortmain'). The reason for the rule originally lay in the fact that as a corporation, having perpetual succession, may never come to an end, the ordinary incident of 'escheat,' by which, on failure of heirs, a man's land went back to his lord, might never occur with a corporation, and thereby the lord be defrauded. But the rule of mortmain is much older than corporations. It has been lately relaxed in favour of various public objects.

anticipating its future revenue.[1] The council may borrow from the Public Works Loan Commissioners, with the approval of the Ministry of Health, any sums which it may require for building or re-building its public buildings, and may mortgage the general rate to secure repayment. Even where existing works are being administered in the borough by bodies acting under special provisions, the borough council may, if it thinks fit, agree to take over the assets and liabilities of such bodies. On the other hand, it is expressly provided by the Municipal Corporations Act, that any ecclesiastical patronage belonging to the corporation, either in connection with land owned by it, or in any other way, shall be sold as soon as possible, under the directions of the Ecclesiastical Commissioners, and, until such sale, shall be exercised by the bishop of the diocese in which it is situated. There are special provisions which prevent, or are aimed at preventing, the use of corporate funds for the purposes of parliamentary elections; but, in its legitimate capacity as trustee of the interests of the borough, the council may support or oppose, at the expense of the corporate property, parliamentary proceedings in connection with measures which it may deem for the advantage or disadvantage of the borough. But such support or opposition cannot be undertaken without the sanction of an absolute majority of the whole council, given at a meeting the object of which has been specially advertised, nor without certain other necessary preliminaries.

Taking over of works.

Ecclesiastical patronage.

Improper use of borough funds.

Parliamentary proceedings.

Police.—As we have said, the extra-metropolitan police forces of the country are virtually now either county or borough forces; the parochial and special constables being only used to supply deficiencies. We

[1] The rule is, that a lease without fine may be made for thirty-one years, or, with or without fine, of land used or to be used for building purposes, for a term not exceeding seventy-five years. But there are savings for cases in which other rules prevailed before 1835. One result of the restrictions is, that municipal property is often let much under its real value.

have already dealt with the county police. We have now to deal with the borough force.

Ante, p. 152.

But, in the first place, it must be noticed that it is not every borough which has its own separate police force. The general idea of the first modern police statute, the Lighting and Watching Act of 1833, was that boroughs with less than a population of 5000, if they chose to maintain a separate police force, should do so entirely at their own expense. The Municipal Corporations Act of 1882 prohibits the establishment of any *new* police force in a borough having less than 20,000 inhabitants. And the Local Government Act of 1888 has now provided that all boroughs which, according to the census of 1881, had a population of less than 10,000, shall for the future be considered for police purposes as part of the administrative counties in which they are situated. It remains, therefore, that no borough can maintain its own separate police force, unless in 1881 it had at least 10,000 inhabitants; and, as a matter of fact, less than one-half (about 120) of the existing municipal boroughs maintain their own separate police.

Some boroughs without separate police forces.

Where, however, a borough has its own separate force, this force is under the special control of a **Watch Committee,** from time to time appointed by the council from amongst its own members, but not containing more than one-third of the whole number of councillors, exclusive of the mayor, who is *ex officio* a member. The Watch Committee, which may act by a quorum of three, appoints, suspends, and discharges the Chief Constable and the ordinary borough constables, passes regulations for the conduct of the force (which regulations must be sent quarterly to the Secretary of State), and generally controls the working of the borough police. A borough constable, when appointed, has the powers and duties by common law and statute of an ordinary police constable, and may act not only within the borough itself, but within any county of which the borough forms part, or which lies within seven miles

Powers and duties of the borough constable.

of the borough limits. Within this radius, he must obey the lawful commands of any Justice of the Peace; but he has a general power to arrest any idle and disorderly person whom he finds disturbing the public peace, or whom he justly suspects of intention to commit a felony, and to take him to the nearest watch-house, where, however, he may be bailed by the constable in charge, if he cannot immediately be brought before a magistrate. Any person who resists, or incites any one else to resist, a borough constable in the execution of his duty, is liable (in addition to other legal penalties) to a fine of £5, recoverable on summary conviction. On the other hand, a constable who is guilty of neglect or disobedience may be suspended by any two Justices of the borough or by the Watch Committee, or may be sentenced to imprisonment for ten days or to a fine of 40s. by a court of summary jurisdiction, or may, finally, be dismissed by the Watch Committee or the convicting court.

Resisting borough constable.

Punishment of borough constables for improper conduct.

With regard to the expense of maintaining a borough police force, we find that it may be provided for from several sources. In the first place, if the Secretary of State shall have certified that, during the preceding year, the force has been maintained in a state of efficiency, both as regards numbers and discipline, the county council will, out of its police grant, pay to the borough council a sum equal to one-half of the costs of the pay and clothing of the force during that year; and this sum may even be augmented if the county council is very rich in Government funds.

Cost of police force.

Treasury subvention.

Furthermore, if, at the passing of the Municipal Corporations Act of 1882, the borough council was entitled to levy a *watch rate* upon the borough or any part of it, they may still continue to do so; and the proceeds, although they will be payable into the general borough fund, will be primarily devoted to the payment of police expenses. The watch rate was levied upon the occupiers of the hereditaments liable, not on the valuation for poor rate, but upon a special valuation based upon the net annual worth of the premises to a tenant on repair-

Watch rate.

ing lease ; and, where a part only of any parish within the borough was liable to watch rate, the overseers had to make a ' separate rate ' on the premises liable, and this rate was allowed by two Justices in the same way as a poor rate. Any person aggrieved thereby might appeal to the Recorder of the borough, if there was one, if not, to the next Quarter Sessions for the county. But no watch rate might exceed eightpence in the pound in any one year ; and no separate rate might exceed twopence in the pound beyond the watch rate. The watch rate is now collected as an additional item of the general rate, and forms part of the ' general rate fund.' If the county council grant, and the watch and separate rates, are not sufficient to provide for the expenses of the police, the remainder must be met out of the other funds of the borough. But the salaries, wages, and allowances of the force, though fixed by the Watch Committee, are subject to the approbation of the council ; though a court of Quarter or Petty Sessions may, of its own discretion, order special rewards or compensation to be paid to a borough constable for special diligence, or for injuries received in the discharge of his duty.

Special constables.

Before leaving the subject of borough police, we may notice that, in addition to the borough force, where it exists, *every* borough must have in reserve a force of ' special constables,' to act if occasion should require. Those special constables are appointed every October by two Justices having jurisdiction in the borough, and may consist of as many inhabitants of the borough, not legally exempt from serving the office of constable, as the justices may think fit. These constables are regulated, not by the County and Borough Police Act, but by the Special Constables Act of 1831. They can only act when ordered to do so by a warrant of a Justice having jurisdiction in the borough ; and this warrant must state that, in the opinion of the Justice, the ordinary police force is insufficient to maintain the peace. The statute of 1831, as previously remarked, has been greatly strengthened by the amending statute of 1914,

a war-time measure made permanent in 1923. Under the provisions of the last Act, the appointment and position of special constables under the statute of 1831, may be regulated by Order in Council.

Ante, p. 156.

We now come to the constitutional machinery by means of which the borough council performs its various functions. This machinery may be considered under the four heads of by-laws, committees, officials, and finance.

(1) *By-laws.*—In addition to its power, as urban sanitary authority, to make by-laws and regulations under the Public Health Act, 1875, a borough council has a general power to make by-laws "for the good rule and government of the borough, and for prevention and suppression of nuisances not already punishable in a summary manner by any Act in force throughout the borough." This very sweeping authority, however, is considerably modified by the manner in which by-laws must be made, and their scope when made. In the first place, no ordinary by-law can be passed at any meeting of the council, unless at least two-thirds of the council are present. And no such by-law comes into operation until forty days after a copy of it has been fixed on the town hall,[1] and another copy sent to the Secretary of State. In the meantime, His Majesty may, by Order in Council, disallow the by-law or any part of it, which thereupon becomes of no effect. But by-laws made by the council as urban sanitary authority under the Public Health Act require the confirmation of the Ministry of Health, not the allowance of the Secretary of State; and it appears from the wording of the Acts that, if a contemplated by-law can be made under the provisions of the Public Health Act, it must not be made under the general power conferred by the Municipal Corporations Act. In the second place, the amount of penalty which can be inflicted by an ordinary by-law

Ante, p. 94.

Mode of making ordinary municipal by-laws.

Ante, p. 94.

Limit to penalty imposed.

[1] The Act does not say that the copy is to remain fixed up during the whole forty days; but, presumably, such is the intention.

of a municipal corporation is limited to £5. Thirdly, the superior courts of law exercise the right, upon any case coming before them which involves reliance on a municipal by-law, to declare the by-law invalid, either because it plainly transcends the limits of the powers conferred by the Municipal Corporations Act, or because it is an unreasonable exercise of such powers. Some will remember the case of the Croydon magistrates, whose by-law prohibiting Sunday music was uncompromisingly set aside by the Queen's Bench Division. Where a by-law is valid, it can be enforced by summary conviction of offenders before a court of Petty Sessions.

Unreasonableness.

(2) *Committees.*—It would be impossible, even if the members of the council gave their whole time to the performance of their public duties, for a borough council to perform all the duties which fall to its lot in full meeting. As a matter of fact, the council divides its duties into departments, and confides the discretionary or administrative side of each department to a committee selected from its own body, and the executive or ministerial side to various officials, reserving only to itself the power to confirm or disallow the proceedings of committees and officials.

Every borough council has a discretionary power to appoint any number of committees of a general or special character, which it may deem necessary. And in some cases the appointment of a committee is compulsory—*e.g.*, if the borough maintains its own police, a Watch Committee must (as we have seen) be appointed, and an Education Committee in boroughs in which the council is a local education authority. But the proceedings of every committee, whether compulsory or not, require confirmation by the council. The minutes of a committee meeting, duly confirmed and signed by the chairman, are evidence of what took place at the meeting, at least until the contrary is proved. A committee meets when summoned by its convener. The council itself must meet quarterly, on the 9th November, and such other days as the meeting on the 9th November

decides. But a meeting may at any time be summoned by the mayor, or on the motion of five members.

(3) *Officials.*—In its municipal character every borough council must appoint a **Town Clerk** and a **Treasurer;** and, in its character as urban sanitary authority, it must appoint a **Medical Officer of Health,** a **Surveyor,** and an **Inspector of Nuisances,** as well as such assistants, collectors, and other officials as are necessary to enable it to perform its duties. As a matter of fact, the council of a great borough has a most elaborate staff of officials, consisting of engineers, accountants, clerks, messengers, porters, and so on. Of these it is only necessary to speak in detail of the Town Clerk and Treasurer; the sanitary officials having been already described in a previous chapter.

Chapter VII.

The Town Clerk is the head of the permanent borough staff; and his office is essential to the due performance of the council's duties, since no order for the payment of money out of the borough fund is valid, unless countersigned by him or his deputy. Consequently, it is specially provided that his office shall not be left vacant more than twenty-one days. The Town Clerk holds office at the pleasure of the council, and receives the salary agreed on between him and them. The council may appoint a deputy to act during his absence or illness. The Town Clerk is the registrar and secretary of the council, and virtually acts as its legal adviser, except where it is deemed expedient to have professional advice. All documents belonging to the borough are in his custody; and a copy of a borough by-law certified by him is *primâ facie* evidence of its existence. He plays a most important part in the preparation and custody of the electoral rolls of the borough, and directs the prosecution of offenders against municipal by-laws.

Tenure of office.

Deputy. Records.

Documents.

By-laws.

Registration.

Prosecution.

The Treasurer, who must be a distinct person from the Town Clerk, is, like him, appointed by the council to act during its pleasure, at the salary and upon the other terms agreed upon between them. No payment

from the borough fund can be made by any one but the Treasurer; and he can, as a rule only pay money, except for standing charges, upon receipt of an order signed by three members of the council and countersigned by the Town Clerk. The Treasurer also prepares the accounts of the borough, and is generally responsible for the due execution of the financial duties of the council. Like all other borough officials, but to a greater extent than most of them, he must give security for the due performance of his office ; and, if he is guilty of defalcation, he can be proceeded against in a summary manner. Security.

This brings us to the consideration of municipal

(4) *Finance*, which we may consider under the two aspects of income and expenditure. Besides its income from subventions, from its property, from fines and penalties for offences against its by-laws, of which nothing further need be said, the main sources of a borough council's income are loans and rates. Income.

The general power of borrowing possessed by a borough council appears to be strictly limited to loans for the purpose of enabling it to acquire land, or to erect any building which it is authorised to build. But it will be remembered, that, as urban sanitary authority, it has very extensive powers of borrowing for sanitary purposes ; and this combination of powers often results in a large permanent indebtedness by a borough council. Generally speaking, the council cannot buy land for any but strictly public or sanitary purposes ; but a recent statute has given it the power, upon the request of a Territorial corps, to acquire land for the military necessities of the corps, and it may borrow money to enable it to fulfil such purpose. A loan raised by a borough council usually requires the sanction of the Ministry of Health, which, as a condition of its consent, may stipulate for repayment either by instalments or by a sinking fund. The loan may be secured either upon the land proposed to be purchased, or upon any other land belonging to the corporation, or upon the Loans. Instalments. Sinking fund.

borough fund or the borough rate, and either by way of mortgage, or by debentures or annuity certificates under the Local Loans Acts.

Borough rate.

Finally, any deficiency in the borough fund must be made good by the imposition of a general rate, which may be ordered by the council to be made in its capacity of rating authority. Inasmuch as the new rating system introduced by the Rating and Valuation Act of 1925 has already been explained, it is not necessary to say more here, except that the borough council, as an urban district council, is invariably the rating authority for its own borough.

See *ante*, p. 89.

Borough fund.

All payments on account of borough rates go to the borough fund, *i.e.*, to the fund applicable to the general purposes of the borough, which includes all rents and profits of land, all proceeds of securities belonging to the corporation, and all penalties for offences against by-laws, except those parts which are payable to informers.

Expenditure.

The outgoings from the borough fund may be classed into two great divisions, those which are payable, as of course, without special order or authority, and those which require special sanction. The first class includes the salaries and allowances of the mayor, recorder, stipendiary magistrate, town clerk, treasurer, clerk to the justices, and other officials of the council, and any sums certified by the Treasury as payable in respect of a municipal election petition. The second comprises registration expenses, the expenses of corporate buildings, coroners' fees and fees payable to a clerk of the peace, the wages, salaries, and allowances of the borough constables, the expenses of prosecutions, and all other expenses properly incurred by the council, or any other authority on behalf of the borough. Payments on account of this latter division require either an order of the council, signed by three members, and countersigned by the Town Clerk, or (in the case of rewards to constables) of a court of Quarter or Petty Sessions, or the express direction of an Act of Parlia-

Items payable without special sanction.

Items which require special sanction.

ment. Where the borough had its own court of Quarter Sessions before the passing of the Local Government Act of 1888, it will not be liable to contribute to the expenses of county Quarter Sessions, unless at the census of 1881 its population had fallen below 10,000; but it will be liable to pay to the county treasurer the costs of the prosecution and maintenance of all offenders committed by the borough magistrates for trial at the county assizes. And, where the borough was not before 1834 exempt from contributing to general county purposes, it continues liable to contribute to such expenses, unless it is a county borough. But when the grant of a court of Quarter Sessions is made after the passing of the Local Government Act of 1888, the grant will not interfere with the power of the county council to call upon the borough to contribute to the common expenses (chiefly judicial) of the borough and other parts of the county, unless again, it is a county borough. And where there is no court of Quarter Sessions the non-county borough is liable to contribute towards the expenses of the county in connection with services which it performs within the borough; though it may, on the other hand, be entitled to a contribution from county funds in respect of services, primarily imposed on the county council, which it performs itself.

Cost of prosecution at assizes.

General county expenses.

CHAPTER XII

SPECIAL TYPES OF BOROUGH

IN the last chapter we considered the normal type of municipal borough, the type to which all places claiming to be boroughs must conform. The one substantial exception to this uniformity was, as we saw, the existence of the borough police force; some boroughs maintaining their own police, others being, for police purposes, part of the county in which they are situated.

But now we must deal, in conclusion, with certain special types of borough, which have one or more special features, in addition to those already dealt with. The special features may be enumerated as (1) a separate Commission of the Peace; (2) a separate Court of Quarter Sessions; (3) a stipendiary magistracy; (4) a borough civil court; (5) the organisation of a judicial county; (6) the organisation of an administrative county. Of these features in their order.

But it must be specially remembered that the existence of one of these special features neither, as a rule, implies nor excludes the enjoyment of others. The distribution is arbitrary, and often the result of historical accident. Whether a borough does or does not have such and such a feature, is a question of fact in each case.

(1) **Separate Commission of the Peace.**—It has long been the practice for the Crown to issue a separate Commission of the Peace for certain boroughs; and its right to do so on the petition of a borough council is expressly reserved by the Municipal Corporations Act.

At present there are about 240 boroughs having their own Commissions of the Peace. It will be remembered, also, that in its mayor and ex-mayor a borough has always one, sometimes two, *ex officio* magistrates, who, during their year of office, also act for the county of which the borough forms part. Borough Justices are appointed by Commission on the recommendation of the Lord Lieutenant of their county to the Lord Chancellor. They must either be resident within the borough or seven miles of it, or they must occupy land within it. No other qualifications are necessary; and women, married or unmarried, are qualified, equally with men.

Qualifications of borough Justice.

The only general disqualifications appear to be conviction of treason, felony, or corrupt practices and bankruptcy, both only for limited periods. It must be carefully remembered that, where a borough has only a separate Commission of the Peace, without a separate Court of Quarter Sessions, the jurisdiction of the county Justices is not excluded from the borough. In such a case, the county Justice can act within the borough in the same way as in the rest of the county.

Concurrent jurisdiction of county Justices.

The borough Justice will have the same powers within the borough as the county Justice within the county. The borough council must provide a suitable Justices' room; and every public court held by two borough magistrates will be a court of Petty Sessions for the borough. The Justices of a borough appoint their own clerk, who must not be a member of the borough council nor clerk of the peace for the county.

Powers.

(2) **Separate Quarter Sessions.**—The grant to a borough of a separate court of Quarter Sessions is likewise in the discretion of the Crown; but, inasmuch as the grant of Quarter Sessions to a borough will, even now, seriously affect the jurisdiction of its county, a sealed copy of the grant must be sent, within ten days after its receipt, to the clerk of the peace for the county in which the borough is situated. At present there

appear to be, exclusive of the London area, about 113 boroughs having their own Quarter Sessions.

The grant of a court of Quarter Sessions puts the borough almost on the footing of a county so far as local *judicial* business is concerned; and the county Justices will have no jurisdiction in the borough, though, by arrangement with the borough council, they may occupy a Sessions House jointly with the borough magistrates. A borough Quarter Sessions has, practically, within the borough, the powers of a county Quarter Sessions, except in licensing matters; and, in order to enable it to exercise these powers, it will require the following additional officers:—

(*a*) *A Recorder*, appointed by the Crown, on the recommendation of the Home Secretary, but paid by the borough council such salary as His Majesty directs, within the limits named by the council in their petition for a Quarter Sessions. The Recorder must be a barrister of five years' standing; he becomes *ex officio* a Justice for the borough, and he takes precedence in the borough next after the mayor. He may not, during his term of office, represent the borough in Parliament, nor be a member of the borough council, nor be a stipendiary magistrate for the borough. But (except in the doubtful case of the Recorder of London) he may represent any other constituency in Parliament. The Recorder acts as sole judge of the court of Quarter Sessions in all *judicial* business, and sits either with or without a jury, according to the nature of the business, as the chairman of a county Quarter Sessions would do. But he does not, as Recorder, undertake the administrative business of Quarter Sessions; he did not, even before recent changes, allow or make rates (though, as we have seen, he may hear rating appeals), or grant liquor licences; although, in his capacity of Justice for the borough, he may take part in any borough sessions having jurisdiction in such matters. The Recorder may

Qualifications.

Duties.

See *ante*, p. 129.

appoint a deputy to act for him in case of unavoidable absence or sickness; and, upon request of the borough council, he may appoint an assistant Recorder to preside over a second court when there is a pressure of business. But the assistant Recorder must have been previously approved as a suitable person by a Secretary of State. Deputy. Assistant.

(*b*) *A Clerk of the Peace*, appointed by the council, who will have the same powers within the borough as the corresponding official in a county. The borough clerk of the peace holds office during good behaviour; and he may not be the same person as the clerk to the borough justices. He may be paid either by fees or by salary; but any table of his fees drawn up by the council requires confirmation by a Secretary of State. *Ante*, p. 133.

(*c*) *A Coroner*, also appointed by the council, to act in the borough as a county coroner does for the county. By recent legislation, as we have seen, a borough coroner must now be a barrister, solicitor, or qualified medical practitioner of five years' standing. But it is expressly provided by the Local Government Act of 1888, that, in the case of boroughs with a population of less than 10,000 at the census of 1881, the powers formerly belonging to the borough council in respect of the appointment of coroners shall be transferred to the county council of the county in which the borough is situated. The office of coroner may not be held in conjunction with that of mayor, alderman, or councillor of the borough. *Ante*, p. 120.

Modification of privileges of Quarter Sessions boroughs.

Formerly, too, the grant of a court of Quarter Sessions to a borough practically made it a county for *administrative*, as well as for judicial purposes. But substantial exceptions to this rule have been introduced by the Local Government Act of 1888. In the first place, as we have seen, a grant of Quarter Sessions to a borough after the coming into operation of that Act will not in the least interfere with the rights of the county council,

which will be able, as before, to require contribution from the borough rate towards the expenses of county services, and will exercise the administrative control formerly exercised in the borough by the Quarter Sessions of the county, except in those matters which, by the Act, are specially reserved to the Justices at Quarter Sessions. But, even in the case of Quarter Sessions boroughs created such before the Local Government Act of 1888, if at the census of 1881 they had less than 10,000 inhabitants, all the former powers of borough *Justices and council* in respect of pauper lunatic asylums, public analysts, reformatory and industrial schools, fish conservancy, explosives, and main roads are now exercisable by the county council; and the borough area is liable to county expenses. In such a case His Majesty may, on the petition of the borough council, revoke its grant of Quarter Sessions, and even its Commission of the Peace; so that the borough will become part of the county for all but purely municipal purposes. Further than this, in the case of *all* boroughs with a population by the census of 1881 of less than 10,000, the former powers of the borough *council* in respect of police, analysts, contagious diseases of animals, destructive insects, gas meters, weights and measures, and explosives, are now exercisable only by the county council.

(3) **A Stipendiary Magistrate** may, by virtue of certain Acts of Parliament, be appointed in any urban district with a population of 25,000, or in any municipal borough. In a borough, the stipendiary magistrate is appointed by the Crown on the petition of the council, which petition states the amount of the salary which the council is willing to pay. The stipendiary magistrate must be a barrister of seven years' standing, he holds office at the pleasure of the Crown, receives from the borough council the salary assigned by the Crown (not exceeding the amount named in the petition of the council), is *ex officio* a Justice of the Peace for the borough, and, in the execution of his office, takes pre-

cedence of all other borough Justices, including the mayor. Generally speaking, he has the powers of two ordinary Justices; and, when sitting in his judicial capacity in a borough which has its own Commission of the Peace, he constitutes a Petty Sessional Court with powers of summary jurisdiction. But he has not the administrative powers of Petty Sessions, though he may act as a licensing Justice for any district wholly or partly within his jurisdiction. There are, it is believed, twenty provincial stipendiary magistrates; thirteen acting under the Municipal Corporations Act, and seven under local Acts. But these figures do not pretend to be exact.

(4) **A Borough Civil Court.**—Nominally, a large number of boroughs have their own courts of civil jurisdiction, in most cases surviving from ancient times. In theory, these courts have considerable powers; and it is said that any one interested can insist, by application to the High Court for a Mandamus, or order compelling the borough court to be held, on reviving them. In practice, since the establishment of the county court system, already explained, only a few of the borough courts actually do business. Examples may be seen in the Liverpool Court of Passage, the Tolzey Court of Bristol, the Provost's Court of Exeter. If there is a Recorder in the borough to which such a court belongs, he will act as its judge; unless the appointment of judge is regulated by local Act of Parliament, or unless a barrister of five years' standing acted at the passing of the Municipal Corporations Act of 1835. If there is no Recorder in the borough, the official named in the charter, or the customary official, appointed by the borough council, acts as judge. The Town Clerk acts as Registrar, unless the council appoints some one specially to the office. The court must be held for trials of law and fact at least four times a year; and there must be no greater interval than four months between any two sessions.

Recorder to be judge, except in certain cases.

Town Clerk as Registrar.

Sessions of Court.

Where a borough has its own Quarter Sessions or its own civil court, the burgesses are liable to serve as

Borough juries.

jurors, unless specially exempt, in both courts. The clerk of the peace summons jurors for the Quarter Sessions, the Registrar for the civil court. But the burgesses of a Quarter Sessions borough are not liable to serve as jurors at the county Quarter Sessions.

(5) **Counties of Cities or Towns.**—A county of a city or town may be defined as a borough which obtained the full organisation of a county before the passing of the Municipal Corporations Act of 1835. The institution is an anomaly, and only tolerated from that veneration for tradition which is one of the most persistent features of English politics. In fact, it has been considerably trenched upon by the provisions of the Local Government Act of 1888, and modern statutes altering the parliamentary franchise.

Sheriff.

The great features of the old county of a city or town were that it had its own sheriff, and that assizes were specially held in and for it. The former feature it still retains; for, by the Municipal Corporations Act of 1882, every borough which is a county of itself must appoint a sheriff on the 9th November in each year. Generally speaking, city and town sheriffs are governed by the same law as county sheriffs; but the property qualification of the city or town sheriff may be in personalty, and he can only be called upon to perform the customary duties. He is entitled to the customary fees of his office. As to the holding of assizes, however, it has long been the practice, in certain cases, to direct that offences arising in these privileged boroughs shall be tried in the adjoining counties; and this practice has been confirmed in the case of six boroughs by the Local Government Act of 1888. There are altogether eighteen counties of cities or towns.

Assizes.

(6) **County Boroughs.**—Finally, the Local Government Act of 1888 constituted a special class of some sixty large boroughs which, at the passing of the Act, were either counties of themselves or had populations of not less than 50,000. A borough in this class, which is known by the name of 'county boroughs,' is practically

Exempt from county administration.

exempted from the jurisdiction of the county council of its county; and its borough council has most of the powers which were conferred by the Local Government Act of 1888 upon county councils, except the powers conferred in connection with parliamentary elections. But the constitution of the borough council is unchanged by its new position; and, for most purposes, the Act merely operates to confer new powers on the councils of the specified boroughs. An equitable adjustment of the financial relations between the county borough and its county in respect of local taxation licences and probate duties is at present in force, subject to revision by order of the Ministry of Health every five years. But, when the Local Government Act of 1929 takes effect, one of the great changes which it will introduce will be, that the whole of every county borough apportionment of the General Exchequer Contribution will be paid direct to the council of the borough.

Ante, p. 137.

Constitution unchanged.

Financial relations between county boroughs and counties. See *ante*, p. 147.

Furthermore, under the provisions of the new Local Government Act, a county borough, unlike an ordinary borough, will become the Poor Law authority for its area, and, as such, will have to carry out its new duties under an 'administrative scheme' approved by the Minister of Health. Generally speaking, the 'administrative scheme' of a county borough council will resemble that of a county council; but a county borough council will not be compelled to appoint 'guardians sub-committees' of its public assistance committee. It may, however, if it chooses, do so; and, if it does, they will be constituted in much the same way as those of the county council, except that they will consist of two classes of members only, viz., members of the county borough council, and persons (including women) some of whom are experienced in poor relief. Members of the council must be in a majority.

Poor Law authority.

See *ante*, p. 140.

See *ante*, p. 141.

As an urban district the county borough, like all boroughs, becomes a rating area under the Rating and Valuation Act, 1925, and its council the rating authority for that area. But, unlike the county at large, the

Rating Authority.

See *ante*, p. 90.

county borough will be a single assessment area, having on its assessment committee not less than one-third consisting of persons not members of the borough council, appointed by the council. Apparently, the council of a county borough will send a representative to the county valuation committee of the county in which its borough is situated. But there appears to be some doubt on this point.

Contribution to county expenses.

If assizes are not held in a county borough, the latter must contribute a proper share of the costs of the county assizes; while if it has no separate court of Quarter Sessions, the borough must contribute to the expense of Quarter and Petty Sessions for the county, and to the expenses of the county coroners. It must be carefully remembered, that there is no *necessary* connection between a county of a city or town and a county borough, though the same place may be both. For there are many county boroughs which are not counties of cities or towns, and, on the other hand, a few counties of cities or towns, such as Lichfield and Poole, which are not county boroughs. The number of county boroughs has been considerably augmented since 1888, and now reaches eighty-three. But the former power of the Minister of Health to create new county boroughs has been superseded; and an Act of Parliament raising the status of an ordinary borough to that of a county borough cannot be applied for by a borough whose population is less than 75,000.

New county boroughs.

GROUP E

MISCELLANEOUS

THE EDUCATION AUTHORITIES . . CHAPTER XIII.
PECULIARITIES OF LONDON GOVERNMENT CHAPTER XIV.

CHAPTER XIII

THE EDUCATION AUTHORITIES

STATE education in England is provided through and by local authorities. These authorities are: in county boroughs, ordinary boroughs with over 10,000 inhabitants, and urban districts with over 20,000, the councils for those areas; and in all other areas, the county councils. Each of these local authorities administers education, as it administers gas, or water supply, or any other important branch of its work, through a committee. The Education Committee, however, is a special statutory creation of the Education Act, 1902; and to understand its working we must become acquainted not only with the Act, but with some outlines of the system which the Act superseded.

The State did not directly undertake the work of education till the year 1870. Before that time the bulk of such education as there was had been provided by the Established Church and other religious bodies, by eleemosynary foundations, and by private enterprise, aided, in some cases, by State grants. But in 1870 was inaugurated a great national scheme. The whole of England and Wales was mapped out by the Education Department into 'school districts.' In each of these, the State endeavoured to secure for every child at least an elementary education, either at one of the privately-provided schools (which thenceforth became subject to State inspection), or at a new class of State-provided schools. For these purposes every school district had either a School Attendance Committee or a School Board. The function of a School Attendance Committee

The scheme of 1870.

School Attendance Committee.

was to enforce attendance at privately-provided schools in districts where no publicly-provided school was considered necessary. In districts where State schools were provided, such schools were provided and managed out of the rates by School Boards, on which the duties of a School Attendance Committee also devolved. The districts were numerous. Every municipal borough was one, and every parish not within a borough was also, primarily, one ; though the whole of London was made a single district, and there was another local exception at Oxford. The School Boards were elected directly every three years by the burgesses in boroughs and by the ratepayers elsewhere. The School Attendance Committees were nominated,—in boroughs by the borough councils from among the ranks of their members, and in most other cases by the Guardians of the Poor.

School Boards.

Features of the 1870 system.

The features to be noted about this system were four : (1) the areas of the authorities were numerous, and, except in London and the boroughs, very small ; (2) the authorities dealt only with elementary education ; (3) the principal authorities, the School Boards, were directly elected ; (4) there were two quite distinct classes of schools, viz., the publicly-provided or ' Board ' schools and the privately-provided or ' voluntary ' schools ; the Board schools only being supported by the rates. After 1891, when parents' fees were practically abolished and ' fee grants ' from the Education Department to all elementary schools (conditional on efficiency) took their place, voluntary as well as Board schools became largely dependent on the State's revenue, besides being subject to the State's control. But no local authority controlled, and no local revenue supported, the voluntary schools.

Such was the national machinery for elementary education prior to 1902. Concurrently with it there had been developed under the Technical Instruction Acts, 1889 and 1891, a not inconsiderable framework of technical education. But this was under a different set of local authorities, the county councils and county

borough councils, and stood in no organic relation to the work of the elementary schools.

The Act of 1902.

The Education Act of 1902 swept away the first three of the features enumerated above, but it did not wholly obliterate the fourth,—the distinction between 'Board' and 'voluntary,' or, as they are now termed, 'provided' and 'non-provided' schools. It first abolished the School Boards and School Attendance Committees, and, by implication, the old distribution of the country into school districts. It made over elementary education to the councils of county boroughs, boroughs with over 10,000 inhabitants, and urban districts with over 20,000, and in all other districts to the county councils. But it constituted the county councils and county boroughs also local education authorities for higher education (which includes both secondary and technical education); though the other authorities are allowed, concurrently with the county and county borough councils, to expend money (at present limited in amount) on higher education, *i.e.*, education other than elementary. Thus there are two classes of **local education authorities,** viz., (i) counties and county boroughs, which are authorities both for elementary and higher education, and (ii) boroughs with over 10,000 inhabitants and other urban districts with over 20,000—both by the census of 1901—which are authorities for elementary education only. But these authorities can only administer through committees, which must be constituted in accordance with the statute; and, in the case of the 'non-provided' schools, the control is divided to some extent between it and a partly independent body, the *managers.*

The local Education Authorities.

We must, therefore, to explain the working of the authorities, describe—

(1) The **Education Committee.**—Any council which is a local authority for education must establish an Education Committee, in accordance with a scheme made by the council and approved by the Board of Education; and all matters relating to the council's

action as an education authority, except raising a rate or borrowing money, stand referred to this committee. The council is to do nothing regarding any such matters before receiving and considering the report of the Education Committee upon them ; and it may delegate to the committee any of its educational powers, except the power of raising a rate or borrowing money.

Constitution of education committees.

The constitution of the Education Committee varies with the council's scheme ; but every scheme must include certain features. At least a majority of the committee must be appointed by the council, and (except in the case of county councils) must be members of it. Other members of the committee may be appointed by the council on the nomination or recommendation of outside bodies (including associations of voluntary schools) ; and the council itself may select outside persons, who have educational experience, or are acquainted with the needs of the various kinds of schools in the area for which the council acts. Every scheme must provide for the inclusion of women as well as men among the members of the committee ; marriage being no disqualification. The only disqualification for membership is the holding of any office, or place of profit, or the possession of any share or interest in any contract or employment, which would disqualify for membership of the council appointing the committee ; and this disqualification is not to apply to any college or school teachers as such. Where, as may especially occur in county areas, there are local reasons for appointing more than one Education Committee, this may be done ; and in some instances different councils may co-operate and form a joint Education Committee, to deal with a composite area.

(2) The **Managers**.—The old School Board usually delegated the practical administration of a Board school to a body of three 'Managers,' whom it might appoint or remove as it pleased. The voluntary schools, which were not subject to the Boards, were similarly managed by trustees, *i.e.*, persons privately appointed

under the trust deeds which defined the uses to which each school and its school property should be applied. By the Act of 1902, the constitution of the Managers for each class of schools is defined, and their powers restricted. In the case of 'provided' schools (*i.e.*, ex-Board schools and new schools provided by the local education authority), the local education authority, if it be also the immediate local authority, appoints all the Managers; if it be not, it appoints two-thirds and the immediate local authority one-third. In the case of a 'non-provided' (*i.e.*, ex-voluntary) school, the local education authority, if it be also the immediate local authority, appoints one-third of the Managers; if it be not, it appoints one-sixth and the immediate local authority appoints one-sixth. In either case the (privately appointed) trustees appoint the other two-thirds, who are called 'foundation managers.' Thus, for instance, out of every six Managers for a 'non-provided' school in a rural area, the county council, which is the education authority, appoints one, the parish council, which is the immediate local authority, appoints one, and the trustees appoint four. It will thus be seen that, while the education authority (acting through its Education Committee) has a decisive voice in choosing the Managers of a 'provided' school, the Managers of a 'non-provided' school include a majority independent of the Education Committee, and represent a force in counterpoise to it.

Constitution of the Managers.

Relation of Managers to Education Committee.

The terms of this counterpoise are defined in the statute. In all that relates to secular education, the Managers are bound to carry out the instructions of the Education Committee.[1] The immediate management is, however, in the Managers' hands; and they have power to appoint or dismiss teachers. The Education Committee's part is to inspect, and to approve

[1] If they refuse, "the local education authority shall, in addition to their other powers, have the power themselves to carry out the direction in question *as if they were the managers*." (Education Act, 1921, s. 29.)

or disapprove the appointment or dismissal of teachers; except that it may not disapprove merely on religious grounds. In 'provided' schools, no religious creed or formulary may be taught other than what is called 'undenominational religion.' This is the so-called 'Cowper-Temple clause.' In 'non-provided' schools religious instruction may be given, and its type determined by the Managers, in accordance with the trust deeds. But parents may, if they please, withdraw their children from religious instruction in either class of schools (the 'conscience clause').

Having outlined the extent of the powers exercised by the Education Committee in respect of the two classes of elementary schools, we may sum up what the local education authority (acting through its Education Committee) is bound to do. It is *bound* to ensure a supply of *elementary* education to all children of school age, and enforce such children's attendance at school, at present up to the age of 14, variable to a certain extent by local by-laws. It acts thus in place of the old School Boards and the old School Attendance Committee alike; though its duties are further defined in connection with its limited control over the 'non-provided' schools. It must examine the sufficiency of these from time to time, and call on the Managers to extend them if necessary; and if the Managers decline, must either execute the extension itself (making the school a 'provided' school), or erect another school. But, in the latter event, it must give public notice of its intention; and various bodies or persons in the area are entitled to protest against the proposal as unnecessary. The dispute is settled by the Board of Education.

Elementary education.

Second, (and here the 'must' becomes 'may') a local authority for higher education has extensive powers in respect of that kind of education. Some of these powers have come down to the local education authority from powers which it exercised before 1902 as authority for 'technical instruction.' Very soon after

Higher education;

the county councils came into existence, it became [1] the custom for Parliament to make large annual grants (known as the 'whiskey money') from the general Inland Revenue, to enable them to subsidise or organise technical instruction, to assist which county and some urban councils were also empowered [2] to levy a rate in aid. These grants and powers remain as part of a wider scheme now devolved on the local education authority. 'Higher' education, as defined by the Act of 1902, goes beyond the 'technical instruction' of the Technical Instruction Acts. It includes any education which is not elementary. The local education authority may, alone or jointly with others, establish or subsidise institutions for any kind of secondary or technical education, or for the training of teachers, or to promote university education. Excepting religious education, there is no type of education which it may not freely develop; and, as we shall see, the financial limits which formerly restrained its activities have recently been removed.

Finance.

The funds requisite for the purposes of education are obtained by the local education authority from the following sources:

(*a*) *Fees*, paid by the children or their parents. These were practically abolished as a consequence of the Fee Grant Act, 1891; and totally abolished as to *elementary* education by the Act of 1918. But they may still be charged in respect of higher education.

(*b*) *Parliamentary grants*, which may be made upon conditions prescribed by Parliament or the Board of Education.

(*c*) *Loans*. An education authority may borrow for the purposes of the Elementary Education Acts, 1870–1900, or of the Education Act, 1902, in the case of a county council, as for the purposes of the Local Government Act, 1888, and in the case of an urban

[1] Beginning with the Local Taxation (Customs and Excise) Act, 1890.

[2] By the Technical Instruction Act, 1889.

council, as for the purposes of the Public Health Acts. But the money borrowed by an urban council is to be borrowed on the security of the fund or rate, out of which the expenses of the council under the Act of 1902 are payable.

(*d*) *The Education Rate.* This is levied by the same machinery and from the same sources as the rate levied by the education authority, when it is a rating authority; when it is not, by precepts to the rating authority.

The effect of the Act of 1902 was to make the *rates* available for the first time for 'non-provided' as well as 'provided' schools. The only difference left between the two as regards finance is in the cost of providing and maintaining the school buildings. For those of a 'non-provided' school, the managers are financially responsible; and if they neglect their responsibility, the authority can compel them to discharge it, or to surrender or close the school.

For higher education the local education authority obtains funds from two sources:

(*a*) *Parliamentary grants*, administered by the Board of Education. These have, in recent years, been largely increased.

(*b*) A *rate*, levied like other rates. Under the Act of 1902, the higher education rate was, normally, limited to two pence in the pound for county councils. But the amending Act of 1918 has removed this limit, as well as provided for the establishment of a great system of 'continuation schools' by which wage-earners may, during their years of adolescence, continue to pursue their studies.

Finally we must note, that all these education authorities work under the eye of the **Board of Education,** a department which for long was a committee of the Privy Council, but was made a Board with an independent President in 1899. In educational matters, it discharges towards the local authorities, on behalf of the central government, functions similar to those

The Board of Education.

discharged in other matters by the Ministry of Health. Its main lever is the annual Parliamentary grant, which passes through its hands, and on the distribution of which it has a good deal of influence. It may also, where a local authority disobeys or defaults, make Orders, which can be carried into effect by writs of *mandamus*.

Such is our present national education system. About 330 local authorities deal with elementary education, instead of about 3300 before 1902 ; all elementary schools come in some measure under their control, and are supported by the rates which they levy ; and these same authorities have a wide discretion for dealing with higher education. The points at which the system still occasions some differences of opinion concern the relation of these authorities to the ' non-provided schools.' They are : (1) the appointment and dismissal of teachers by bodies of managers, of whom a minority are nominated by the education authority, and a majority by the representatives of a particular religious denomination ; (2) the teaching of denominational religion by the ordinary school teachers ; (3) the payment for such teaching out of the rates. It is beyond our province to express a judgment on such points ; we should, however, mention, that a Bill to alter the law upon them passed the House of Commons by large majorities in 1906, but was rejected by the House of Lords.

The formal law on the subject of State education is now mainly to be found in the consolidating Act of 1921. But changes, notably in the direction of raising the age of compulsory attendance to fifteen, are at present under the consideration of Parliament.

CHAPTER XIV

PECULIARITIES OF LONDON GOVERNMENT

THE metropolitan area is governed by local authorities constituted differently from those elsewhere ; and the powers which we have described in the foregoing pages are differently distributed between them. The anomalies are chiefly, though not entirely, to be explained on historical grounds. Metropolitan vested interests were stronger than provincial, and resisted reform longer ; and when reform came, it came differently. The area now falls for most purposes into two divisions—the City of London and the County of London. The city has one main local authority, its Corporation. The county has a County Council for its whole area, and twenty-eight metropolitan borough councils, which divide the area between them. The powers of the City Corporation correspond closely to those of a county borough. But the relation of the London County Council to the metropolitan borough councils is not exactly that in which the council of an ordinary county stands to the council of a non-county borough within its area. The first clue, then, to the London labyrinth is to describe the authorities for these three areas,—the *City* of London, the *County* of London, and the *metropolitan borough*,—and their respective functions.

The City Corporation.

(i) **The Corporation of the City of London.**—The City is an area of about a square mile in the heart of London. The Corporation is officially styled 'The Mayor, Commonalty, and Citizens of London' ; and it is important to remember that, as in the case of other

boroughs, but unlike the case of the newer units (the administrative counties and the sanitary districts), it is the whole unit, not merely its governing body, which is the body corporate and politic. But, in popular language, the 'Corporation' means the governing body of the corporation, *i.e.*, the Lord Mayor, Aldermen, and Common Council. The last is not elected by the ratepayers of the area as such, but by the 'liverymen,' (being freemen of the City), that is, the members of the city companies, which are the descendants of the mediæval trade-gilds,—the Ironmongers, Goldsmiths, Fishmongers, Merchant Taylors, etc. The aldermen, unlike those of any modern English local body, form a second chamber, sitting apart from the Common Council. They are elected (with one exception) each for a 'ward' or local government division, of the City at 'wardmotes' of the electors held under precept of the Lord Mayor. The Court of Aldermen has a certain amount of patronage; and the Lord Mayor and Aldermen are the liquor-licensing authority for the City. Moreover, each Alderman on election becomes a Justice of the Peace for the County of London; and, generally speaking, he has the powers, as such, of two ordinary magistrates within the City, *i.e.*, he is, or can be, a Petty Sessional Court. The Aldermen fill the office of Lord Mayor by an annual succession in order of seniority; though there is a formal nomination by the Liverymen. The Lord Mayor of London is, of course, a person of the highest dignity and importance; and he has many privileges and responsibilities, which it is impossible to enumerate here. Put shortly, he is the supreme representative of English civic authority, not only to England, but in respect of foreign countries and visitors therefrom. These peculiarities have a historical interest; they represent the sole survival of the undemocratic corporations which prevailed in the boroughs before the passing of the Municipal Corporations Act, 1835.

The Common Council.

The Aldermen.

The Lord Mayor.

Apart from education, which throughout London

Its functions.

devolves on the London County Council,[1] the City Corporation has the principal powers and duties of a county borough council. In its area it is the sanitary authority, the highway authority, and the police authority. It maintains several of the London bridges, and owns and controls several markets, not all within its own area. Its aldermen are, as has been said, all *ex-officio* justices of the peace; and, among numerous powers connected with the administration of justice, it had, until very recently, a court of its own, the Mayor's Court, now amalgamated with the City of London Court. The City Corporation is strong in its historic prestige, and in the wealth of the vested interests concerned to maintain it. Its enemies object (1) that it is undemocratically constituted; (2) that it exempts the richest square mile in London from liability to contribute to London's general expenses. The first objection has been partly parried in recent years by the Corporation's undoubted efficiency; but there seems no way of parrying the second.

The London County Council.

(ii) **The London County Council.**—The county of London and its council were created by the same Local Government Act, 1888, which brought the county councils into being elsewhere. London outside the City had previously been made a unit for some purposes by the Metropolis Management Act, 1855. The area of the county, as now defined, is much less than that of 'Greater London,' but it contains about 117 square miles, and at the census of 1921 had 4,483,249 inhabitants, which, rather surprisingly, was appreciably less than at the preceding census of 1911. The council consists of 124 councillors and 20 aldermen. The councillors are elected triennially, two from each of the county's parliamentary divisions, upon the ordinary local government franchise. The aldermen are elected by the council for six years. The council also elects

[1] For educational purposes the City Corporation ranks as a metropolitan borough council, and has the same minor powers of appointing managers, advising on school sites, etc.

annually from among its own members a chairman, vice-chairman, and deputy-chairman.

Its functions.

The London County Council is not the sanitary authority for its area ; but it exercises many of a sanitary authority's functions, derived from the old Metropolitan Board of Works, whose duties it took over. Thus it is found in some cases superseding or supplementing, in others supervising, and in others duplicating, the general sanitary duty committed to the metropolitan borough councils. Thus it deals with main sewerage itself, while the borough councils attend to their local sewers and drains, subject to a certain degree of supervision ; it is, too, the authority to carry out the Housing Acts, while the borough councils may also take powers to erect workmen's dwellings. Again, though the borough councils are the highway authorities, and the provisions of the Local Government Act, 1929, as to the transfer of road functions, do not, in general, apply to the county of London, yet the county council is the authority for effecting street improvements, for dealing with means of transit (*e.g.* tramways), and for providing and managing bridges, Thames tunnels, and ferries, other than those kept up by the City. Among its other multifarious undertakings, it manages London's Fire Brigade, London's parks and open spaces (some few are maintained by borough councils), and London's asylums (it is about to take over the functions of the Metropolitan Asylums Board), while, so long as that Act was in force, it sent members to the 'central body' established for the administrative county of London under the Unemployed Workmen's Act, 1905. The chief power which it has not, and the ordinary county council (in conjunction with the Justices of the Peace) has, is the control of the police in its area ; the Metropolitan police being directly administered by the Home Secretary. By the London Education Act, 1903, which followed closely the lines of the Education Act, 1902, described in the last chapter, it became the local education authority for the entire London area, succeeding to the duties of the London

School Board, and acquiring, like the other county councils, powers to widen its 'technical instruction' scheme into a scheme of 'higher education.'

Perhaps most important of all recent changes, the London County Council, like other county councils, becomes the Poor Law authority for its area under the Local Government Act, 1929. Like the other county councils, it will carry out its new functions under an 'administrative scheme'; but this scheme will not be exactly on the same lines as that of the typical county council. The London County Council is given, for example, more liberty as to the exercise of the powers primarily belonging to its Public Assistance Committee by subordinate committees; and this difference is emphasised by the fact, that these subordinate committees will, in the case of the County of London, be known not as 'guardians committees' (or sub-committees), but as 'local committees' (or sub-committees). The London County Council will, in fact, have more power than the typical county council in fixing the extent of the functions of these subordinate committees. On the other hand, the vaccination and registration functions of the normal Poor Law authority under the Act will not be transferred to the London County Council, but to the City of London and the metropolitan boroughs, each for its own area.

See *ante*, p. 141.

Broadly speaking, the new system of Exchequer grants previously described as applicable to ordinary county and county borough councils, will apply to the county of London; but there are differences, too technical to be set out here, in the method of calculating the amounts to be set aside out of the 'county apportionment' for the benefit of the City and the metropolitan boroughs. It may also be noted, that, when the Local Government Act of 1929 takes effect, the existing scheme by which, under the provisions of an Act of 1894, the wealthier areas of London have contributed towards the cost of poor relief in the less prosperous areas, known as the Equalization of Rates system, will cease to operate.

(iii) **The Metropolitan Borough Councils.**—These were established by the London Government Act, 1899, which divided the county of London into twenty-eight very unequal areas, and gave a metropolitan borough council to each. The electorate is the same as for the London County Council. The councillors, like county councillors, are all elected together, and all retire together every three years, unlike the councillors for an ordinary borough, of whom one-third are elected and one-third retire every year. Here too, just as for the county councils, clergymen are eligible; though for ordinary borough councils, until lately, they were not. Neither sex nor marriage disqualifies. The aldermen, who sit with the council, are elected for six years. The mayor is elected like, and holds the same position as, the chairman of a county council. Metropolitan Borough Councils.

The councils are the sanitary authorities under the Public Health Acts, and the highway authorities within their areas; and they have the powers of an ordinary borough for adopting Adoptive Acts. They attend to the local drainage; they appoint sanitary inspectors; they pave, cleanse, and light the streets; they may establish baths and wash-houses, carry out housing schemes, and erect free libraries. They are also the authority which may, if it thinks fit, supply electric light and power: and many have electric installations. They are not education authorities; but they occupy under the London County Council much the position occupied by the councils of rural parishes and small boroughs and urban districts under ordinary county councils, in that they appoint one-third of the managers of 'provided' schools and one-sixth of those of 'non-provided,' besides minor powers. Their sanitary work is supervised by the London County Council, which also controls their borrowing, subject to an appeal within six months to the Ministry of Health. A 'distress committee' of the council of every metropolitan borough was established under the Unemployed Workmen's Act, 1905, subordinate to the 'central body' for London. But, as we have Their functions

See *ante*, p. 176.

seen, the scheme of that Act has been superseded ; and the Act itself will shortly disappear.

Finally, the borough councils assess and collect the local rates ; being, like other urban district councils, 'the' rating authorities for their respective areas, under the London Government Act, 1899. Generally speaking, the scheme of the Rating and Valuation Act of 1925 does not apply to them ; because most of the reforms in valuation and rating which it was designed to effect, were already in force in London under the Valuation (Metropolis) Act of 1869. But the section of the Rating Act of 1925 which dealt with the valuation of machinery for rating purposes, was extended to London by the amending Act of 1928 ; and the benefit of the 'de-rating' policy of the Local Government Act of 1929 applies to London, the way being prepared for its application by the Apportionment Act of the previous year.

Finally, it may be mentioned that, by an important section (64) of the Local Government Act of 1929, the Minister of Health may, on the application of the London County Council, or any representative association of the metropolitan borough councils, transfer *any* functions exercisable by the London County Council (other than its Poor Law functions) to the metropolitan borough councils, or, alternatively, authorise the exercise of any such functions by the borough councils as agents for the London County Council. This is a section which may, in the future, have a considerable influence on the development of London government.

The Metropolitan Asylums Board.

These three are the principal local authorities for the metropolitan area. But some peculiar composite bodies must be briefly mentioned. The **Metropolitan Asylums Board** is at present made up of persons chosen by the London Boards of Guardians, with others appointed by the Ministry of Health ; but its functions will, as has been said, pass to the London County Council on the taking effect of the Local Government Act, 1929. It provides asylums for imbeciles, certain hospitals for

children, and hospitals for infectious diseases. The **Metropolitan Water Board,** set up by the Metropolis Water Act, 1902, took over from private companies the water supply for an area including the county of London and about 500 square miles environing it. It is elaborately constituted of sixty-eight members,—fourteen appointed by the London County Council, twenty-nine by the different metropolitan boroughs (Westminster appointing two), two by the City, fourteen by different adjoining boroughs or urban districts or groups of such, five by the councils of the five different adjoining counties, two by the Thames and Lea Conservancy Boards, while the chairman and vice-chairman are co-opted by the Board and paid. The Water Board is interesting as an attempt to enable a large number of existing local government areas to co-operate through their authorities in performing a task common to all. This problem of the relation between common services and local areas is becoming imminent in many directions.

The Water Board.

Also must be mentioned the **Metropolitan Police Commissioners.** We have already seen that the only London authority which is a police authority is the City Corporation, and that only for the small City area. The county of London with a large fringe round it, aggregating nearly 700 square miles, is policed by a special force controlled by certain Metropolitan Police Commissioners appointed by the Home Office. This anomaly has been justified on the ground that London's police is a matter of special national as well as local importance ; but it is fair to point out that almost its whole cost (exclusive of the grants which are made for all police forces alike) is borne by the ratepayers of the county of London.

Metropolitan Police.

The London Traffic Act of 1924 has created yet another 'London' by setting up a representative Traffic Committee to consider any matter within the provisions of the Act and report to the Minister of Transport, who is, by the Act, given somewhat extensive powers of regulating traffic (apparently of all kinds)

Traffic Committee.

within an area which far exceeds the limits of any other Metropolitan area, except, perhaps, that of the Central Criminal Court. For the composition of the Committee, and the powers of the Minister, as well as for the description of the area included, the reader must refer to the Act itself and its Schedules. In theory, it is only a temporary Act, operating for seven years. In substance, it is an experiment which, it is agreed, will, in some form, have to be made permanent; and, indeed, plans for the enlargement of its operations are at present before Parliament. Meanwhile, it creates another anomalous unit in the arena of local government.

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